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Something to Preserve

A report on HISTORIC PRESERVATION *in America's*
best-preserved Puritan town, IPSWICH, MASSACHUSETTS



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Something to Preserve

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*A report on HISTORIC PRESERVATION by
the acquisition of Protective Agreements
on buildings in IPSWICH, MASSACHUSETTS*

by

The Ipswich Historical Commission

published by

THE IPSWICH HISTORICAL COMMISSION *in cooperation
with the Ipswich Heritage Trust and the U.S. Department
of Housing and Urban Development, Office of Community
Planning and Development Office of Environmental Quality*

1975

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Foreword

THE contract for the Urban Beautification and Improvement Demonstration Project, Massachusetts B.D. 3, was signed between the United States Department of Housing and Urban Development and the Ipswich Historical Commission on November 19, 1969. The Project in general was designed to demonstrate the use of recorded Agreements in historic preservation. The Commission agreed to provide a demonstration of the methods of protecting buildings of historic value through the acquisition of recorded Agreements or other less-than-fee interests and the possible purchase of such buildings for the purpose of resale, subject to Preservation Agreements. At the same time, the Commission agreed to do research on the use of these methods and to publish a report of its research and action. A further Agreement was signed between the Ipswich Heritage Trust and the Ipswich Historical Commission to provide for nonfederal cost of the Project, which was donated by the Heritage Trust.

Preface

ONE of the earliest examples of the uses of history is recorded by Aesop in the story of the Fox and the Lion. The Fox, as most of us remember, was invited to dinner by the Lion — a signal honor. Upon arriving at the appointed hour, the Fox observed that the footprints in the dust before the den, made by previous visitors on similar occasions, pointed only inward. The Fox read the history and stood the Lion up.

No man can know where he is likely to be tomorrow unless he knows where he was yesterday and the day before. Preserving some evidence of where we have been so that each new generation may re-examine the interpretations of the last: that is the chief purpose of the Ipswich Historical Commission and of all who assisted with this publication and the Project it describes.

A condition of American history almost since its beginning has been the wasteful process of rapid building and rebuilding. The loss has been not only a material one. In the grand rush down the main road we have lost sight of alternatives — pastoral detours, pleasant rest areas and country towns. The economics of mass production have overwhelmed the variety and frugality that arise from individual local solutions. It is important, then, to preserve the best models from the past. We may need them again. The disappearance of such models is perhaps most to be regretted in the field of architecture. It was this understanding of our needs that nurtured the efforts of all those who were involved with the Ipswich Project.

*Ipswich, Massachusetts
August 19, 1974*

THE IPSWICH HISTORICAL COMMISSION
John F. Conley, Chairman
Barbara Emberley
Louise Hodgkins
Alice Keenan, Secretary
George R. Mathey, Vice Chairman
Lovell Thompson
John Updike

Acknowledgments

THE Ipswich Historical Commission and the town of Ipswich are indebted to many individuals and organizations for their support of this Project, and more specifically indebted

To the Ipswich Historical Society and the Ipswich Heritage Trust and their supporters, for their pioneer work in preservation through purchase and resale with Preservation Agreements, for their sharing of the cost of this Project, and for their constant cooperation;

To Abbot Lowell Cummings, of the Society for the Preservation of New England Antiquities, one of the country's most knowledgeable experts on seventeenth- and eighteenth-century New England buildings, for his help with our inventory and necessary evaluations;

To our Project Director, John F. Cole, and our legal consultant, Albert B. Wolfe, each of whom devoted hours and care beyond the call of duty;

To Elizabeth Newton of the Ipswich Historical Society, curator of the Whipple House, for her assistance with the history of Ipswich;

To Daniel B. Lunt, President of this Society and Treasurer of the Ipswich Heritage Trust, for wise guidance and much exacting work in the initiation of the Project and for assistance with this report; and most of all

To the pioneering owners who signed the sixteen Agreements with the Commission for these Ipswich houses:

Ascension Memorial Church, 3 High Street

Harold Bowen, 3 Summer Street

Edward R. and Barbara C. Emberley, 6 Water Street

Ian and Jean Forman, 97-99 High Street

John E. and Anne B. Greenlaw, 62 East Street

Robert M. and Pattie T. Hall, 7 County Street
George E. and Louise C. Hodgkins, 80 East Street
Niels and Eileen Knakkergaard, 57 North Main Street
George R. and Sheila W. Mathey, 1 Turkey Shore Road
Paul J. and Cathleen C. McGinley, 26 High Street
James C. McManaway, Jr., 64 North Main Street
Ivan A. and Mary F. Nichols, 33 High Street
Theodora Perry, 2 Turkey Shore Road
Joseph and Vera Ross, 104 High Street
Lovell Thompson, 142 Argilla Road
John C. and Katrina Vincent, 78 County Road

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Something to Preserve

I

The Background

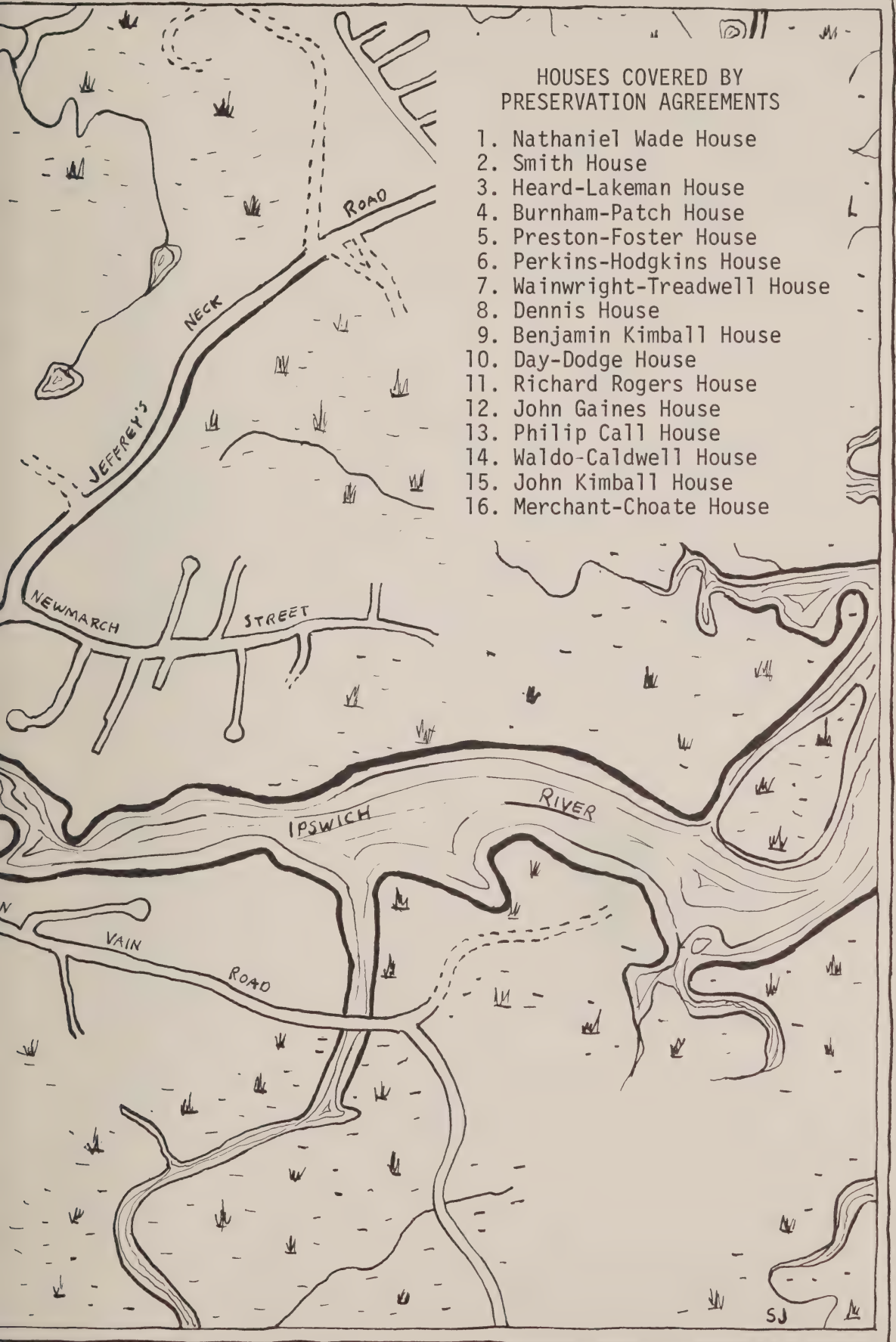
FOUR elements are generally required for success in any undertaking involving the preservation of buildings of historic interest. They are, first, something worth preserving; second, an active, informed and interested body of citizens acquainted with the sources of local history and anxious to preserve it; third, a public body willing and able to translate private enthusiasm into public action; and fourth, enabling legislation permitting the recording of Preservation Agreements, and their survival through changes of ownership and legal enforcement.

These conditions existed in Ipswich to a fortunate degree. It therefore became the subject of a pilot venture joined by numerous agencies — federal, state, private and local.

This book is about that venture and the conditions which made it possible, how it was conducted, what it accomplished and what was learned from its outcome. In the history of Ipswich lies the explanation for its early settlement, its unusual state of preservation and consequent selection as the seat of a Demonstration Project.

HOUSES COVERED BY
PRESERVATION AGREEMENTS

1. Nathaniel Wade House
2. Smith House
3. Heard-Lakeman House
4. Burnham-Patch House
5. Preston-Foster House
6. Perkins-Hodgkins House
7. Wainwright-Treadwell House
8. Dennis House
9. Benjamin Kimball House
10. Day-Dodge House
11. Richard Rogers House
12. John Gaines House
13. Philip Call House
14. Waldo-Caldwell House
15. John Kimball House
16. Merchant-Choate House



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THERE is much in America profoundly worth preserving that is not easily identified by the casual traveler; in that respect Ipswich is typical of villages, towns and cities everywhere in the country. Located on a generous ocean margin of sand and salt marsh, Ipswich seems a pleasant pastoral place. It is fortunate in retaining portions of two typical New England greens. A small harbor is at the head of the Ipswich River estuary. Near the harbor and along the river, around the two greens, and for nearly a mile of East and High Streets in the shelter of Town Hill may be found a concentration of unpretentious but venerable private dwellings. On the face of it, Ipswich does not seem what it is: a priceless reservoir of early American history.

COLONIAL IPSWICH

Agawam was the Indian name for this region when, in 1614, Captain John Smith reported, "This place might content a right curious judgment, but there are many sands at the entrance of the Harbour, and the worst is, it is imbayed too farre from the deepe sea."¹

Boston itself was only three years old when the Governor and Council of the Massachusetts Bay Colony resolved to "hasten the planting of Agawam." John Winthrop, Jr., the Governor's brilliant eldest son, led the expedition in March of 1633. The first houses

¹*A Description of New England: or the Observations and Discoveries, of Captain John Smith (Admiral of that Country), in the North of America in the year of our Lord 1614.* London, 1616. As quoted in Thomas Franklin Waters, *Ipswich in the Massachusetts Bay Colony*, Vol. 1, Chap. 2, p. 7 (Ipswich, Mass.: Ipswich Historical Society, 1905).

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were “wigwams, huts and hovels” built against the hillside near what is now the town wharf. By order of the General Court, dwellings had to be within one-half mile of the Meeting House; outlying lands were for tillage, pasture and woodlots. The settlement prospered. On August 4, 1634, the Court of Assistants changed its name to “Ipswich” in acknowledgment, they said, “of the great honor and kindness done to our people who took shipping” in that ancient English port.

To this outpost came the most extraordinary of pioneer groups. “The peopling of the towne is by men of good ranke and quality, many of them having the revenue of large lands in England before they came to the wilderness.”² Winthrop was shortly joined by Thomas Dudley, Simon Bradstreet, Samuel Symonds and Richard Saltonstall — two governors, one deputy-governor and one magistrate. With them came America’s first poetess, Anne Bradstreet, and her sister Patience, wife of Daniel Denison, who was to become commander-in-chief in King Philip’s War. “Glorious,” Cotton Mather wrote, “was the Church of Ipswich.” First and most brilliant of its scholar-ministers was Nathaniel Ward, lawgiver, wit, preacher and poet, who drew up the Body of Liberties, our first code of fundamental laws. A free school was voted by the town meeting in 1642, and one of the colony’s four courts was held in Ipswich.

EARLY TRADE

By 1646 the population is thought to have been close to 800 inhabitants — 146 families. Twenty or more ships bearing immigrants were arriving each year along the shores of the Bay Colony and the pressure to find suitable places for settlement increased steadily. The turmoil of these years is reflected in the rapid changes of ownership of the original house lots. Existing earliest houses along the oldest streets were by no means first shelters in the wilderness. The affluent John Whipple, whose mid-seventeenth-century house is now open to the public, probably lived near Boston

²Edward Johnson, *The Wonder-Working Providence of Sion’s Saviour in New England: A History of New England from the English Planting in 1628, until the yeere 1652*. London, 1654. As quoted in George Francis Dow, *Two Centuries of Travel in Essex County, Massachusetts: A Collection of Narratives and Observations Made by Travelers, 1605-1799* (Topsfield, Mass.: Topsfield Historical Society, 1921).

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before he came to Ipswich. When he planned the distinctive architectural details of the house, he was building for posterity, as were the builders of most of the seventeenth-century dwellings which exist in Ipswich today.

The town prospered along with the colony. Wharves were built and warehouses; land was set aside for the fishing trade; flakes for the drying of fish, dwellings for fishermen, and an acre of land for cultivation by each boat's crew were provided. The exporting of salt hay from Ipswich by barge was to continue for more than 250 years. Hunting and trapping diminished in importance; fishing and lumbering steadily increased, as did shipbuilding. Staves, clapboards, masts and pre-cut timbers for houses were exported. This mercantile success of the colony, of which Ipswich was a part, became a source of concern back in England.

Britain's determination to impose limiting regulations on commerce was ill-received in Ipswich. As early as 1687, the town had distinguished itself by public protest against taxation without representation. Governor Andros, in response, imprisoned three town leaders in what became known as the Andros Rebellion. Commemorating this incident, the Town Seal of Ipswich bears the words "Birthplace of American Independence." In 1766, the town representative in the colonial legislature was replaced because his votes did not strongly enough reflect the bitter feelings of town meetings; dissension grew as the decade passed. Ipswich minutemen were marching toward Lexington and Concord by late afternoon of April 19, 1775.

POST-COLONIAL HISTORY

After the eight years of war, the plight of the old town was acute. So many men had been away that agriculture suffered; markets for fish were lost; shipping diminished to the vanishing point; the war debt of the town was enormous and greatly complicated by currency and monetary chaos; poor relief was a staggering problem. The Hamlet Parish thought it could manage better apart from impoverished Ipswich and so withdrew to become the town of Hamilton in 1792; there went the richest farms. When the Chebacco Parish withdrew in 1819 to become Essex, the shipbuilding revenues were for the most part lost to Ipswich. Population figures for

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Ipswich tell the story. In 1790, in the first federal census, Ipswich showed nearly 5,000; by 1820 the town registered 2,550.

ECONOMIC QUIETUDE

The sandbar at the mouth of the Ipswich River, observed by Captain John Smith long ago and marked today by the line of breakers about a half-mile off Crane Beach, may be considered the single most important reason for the survival of so many old houses in Ipswich. Most Ipswich families in the early 1800's had a seafaring member, but he shipped out of Boston, Salem, Beverly or Newburyport — all blessed with deeper harbors. Prior to the building of the Newburyport Turnpike after 1803, all overland communication between Boston and Newburyport, Portsmouth and Portland was through Ipswich. The turnpike, although not in itself immediately successful, certainly helped to make Ipswich the quiet town it became. In 1790 there were 600 men, women and children making pillow-lace, but with the development of lace machines the market for Ipswich's handmade product disappeared.

The Industrial Revolution brought to Ipswich several small and fitfully prosperous textile mills and, with the incorporation of Ipswich Mills Co. in 1868, an extensive hosiery factory. To man this enterprise came new settlers from Nova Scotia and Quebec and, a generation later, from Greece and Poland. Today, though the hosiery mills have ceased operation, the town population has been increased by metropolitan commuters and numbers 12,000. It supports two local newspapers, nearly a dozen churches, and a score of clubs and societies. In the twentieth century as in the seventeenth, the citizens of Ipswich excel in many fields and, as before, they center their lives within the boundaries of river, sea and salt marsh.

What is most treasurable in the town is its core of historic houses. Standing under huge elms, they reveal their age in sharp pitch of roof and unexpected breadth of chimney. Small and simple, built with the materials and skills at hand, these are frontier houses. Yet within their range they are not only sturdy but varied and lovely. The gunstock posts and overhang, suggestive of medieval houses; the fabulously wide boards, suggestive of the virgin forests which stood nearby; the blending of form and function, austerity and beauty, suggestive of the Puritan mind — all combine to give a vivid

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impression of the world of their builders. And, oddly enough, these old houses are better suited to modern living than many later mansions. Designed for housewives with little except family assistance, centering on a warm family hearth, battened against the cold north and turning toward the southern sun, they are still valid, economically, socially and architecturally, in our own world.

3

The Informed Citizenry

IN Ipswich, the oldest part of town has remained to an exceptional degree intact. The terrain and the settlers' need for mutual support and protection kept it a compact town in its first century. The houses invited remodeling but not demolition. The coal grate and central heating unfortunately robbed the town of some of its great medieval chimneys. Small shops replaced residential dwellings at the foot of the hill leading from Meeting House Green. There were the pressures of change, but the pressures of growth were not great until the twentieth century was well advanced. The wise planning and solid building of the first generation held the old part of town comparatively unchanged.

THE IPSWICH HISTORICAL SOCIETY

Recently, more organized efforts toward preservation were called for, as the erosion of Ipswich's architectural heritage approached the rate of nearly one good colonial house lost each year. Many of these attempts had their origin in the Ipswich Historical Society, founded in 1890 by the Reverend Thomas Franklin Waters, the author of a two-volume history of Ipswich, volume 1 published in 1905 and volume 2 in 1917. Because they contain a history of virtually every significant house in the town, these two volumes can be considered the base from which all organized preservation schemes have originated.

In the early 1950's, Dr. Abbott Lowell Cummings, Director of the Society for the Preservation of New England Antiquities, and a leading authority on first-period buildings in the region, performed for the Society an initial survey of Ipswich buildings, augmenting the material in Waters' history.

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To the members of the Historical Society and to others in the town the need for a body specifically devised and endowed for the purpose of protecting the Ipswich architectural heritage had long been apparent. Since such an enterprise has elements of financial risk, the trustees of the Society determined that they could not perform that function. There then began a series of events that precipitated the formation of a body which could.

In 1960, the town demolished a three-hundred-year-old dwelling for a street widening. Two years later, the town took possession of an exceptionally interesting house and lot for an electric substation site and storage yard. At the last minute, it was saved from the bulldozers by two dedicated and determined women. The wife of the Society's president dashed to the scene and with a personal check persuaded the bulldozer operator to delay demolition while the vice-president's wife persuaded the Smithsonian Institution to send experts to Ipswich, where their inspection convinced them that the building had to be saved. As a result, the house was carefully dismantled, sent to Washington and partially reassembled. Though lost to Ipswich, it is now preserved as an example of the builder's art and a key feature of the Growth of America Exhibit in the Smithsonian Museum of History and Technology.

THE IPSWICH HERITAGE TRUST

Later in that same year, 1962, a major oil company purchased another important, centrally located house, where it planned to substitute a service station. This dwelling, at the foot of Meeting House Green, had been built circa 1707 by the same Colonel John Appleton who, in 1687, was jailed by order of the Royal Governor for his part in the "Andros Rebellion." To save this house, and later others, by more organized methods than last-minute individual measures, the Ipswich Heritage Trust was organized under the aegis of the Ipswich Historical Society, which is its designated beneficiary. After long negotiation, the oil company relinquished title for a payment by the Trust of the full purchase price plus attorney's fees and other costs. With the help of outside donations, the project was financed. Within two years, and at a price far less than cost, the house was sold for use as a professional center, with deed restrictions assuring the trustees that no significant changes would be made to the structure's frame and outer appearance.

The Informed Citizenry

Meanwhile, the Trust took an option, and exercised it, on two more buildings on Meeting House Green, which were in deplorable condition and threatened with disastrous conversions or even demolition. One was built in the mid-eighteenth century by Dr. John Manning, Revolutionary surgeon and early crusader for smallpox inoculation; the other, on the same property, built before 1769, had been the town's first post office and is perhaps the earliest in the country still standing. Both were then later sold as a unit with deed restrictions covering interior detail as well as framing and outside appearance. The new owners have restored the first to a handsome single-family dwelling and the other is now a picturesque clock shop.

A third purchase and resale by the Trust required the new owner to remove a long, ugly ell attached to the old dwelling in the early 1800's. The end result is that a house which was literally rotting away and uninhabitable but which contained handsome paneling and an elaborate small staircase carved by the family of Thomas Dennis, one of the most famous of early American joiners, is now a source of pride to the owners and to the town. In each case, a corollary of the Trust's preservation efforts has been a substantial addition to the town's tax base.

The primary purpose of the Trust was the purchase of buildings of historic and architectural distinction for resale under Preservation Agreements designed to maintain those features of each structure which have distinctive value. However, clearly there are many owners of old houses who wish to have them preserved but have no interest whatever in selling them. The Trust therefore included in its charter a clause enabling it to purchase not the property but only the right to attach a Preservation Agreement to the deed. That right is called a less-than-fee purchase and it later became important in the context of the Ipswich Project.

HISTORIC DISTRICT

During this time, the Society and other local organizations had come to the conclusion that official and public attention to the problem was needed. Therefore, in 1963 the Board of Selectmen, under the authority given them by Chapter 40C of the General Laws of the Commonwealth of Massachusetts, appointed an Historic District Study Committee. The Committee's purpose was to study the

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possibilities for, the physical boundaries of, and the rules and regulations governing, an historic district. Within such a district, permission from an Historic District Commission would have to be obtained for any new construction or changes visible from a public street or way.

After a year and a half of study and public hearings, the Committee submitted to the Great and General Court of Massachusetts a bill that delineated an area, necessarily quite large because of the number of historically valuable structures located throughout the center of town, as an historic district. Because of local opposition, this bill was killed by the House. Three subsequent attempts to establish a district also failed, one by action of the state's Attorney General in 1967 and the other two by action of the two meetings in 1967 and 1968.

An analysis by the Study Committee indicated that the reasons for the failure to establish a district may have been (1) the proposed district was too large, (2) the owners of less significant houses within the district did not feel that they should be governed by the same standards which governed the owners of historic houses, (3) the owners feared that being in such a district would make it more difficult to sell one's property, particularly if that property was not historic, (4) people generally distrusted the creation of yet another official body with regulatory powers.

Therefore it seemed that, at least for the time being, another more individual, personal, house-by-house approach to preservation should be attempted.

4

The Public Body

HISTORICAL COMMISSION

THE Ipswich town meeting of 1964, in order to take advantage of possibly available state and federal funds, voted into existence an Historical Commission, the membership of which coincided with that of the Study Committee.

ACTIVITIES OF THE COMMISSION

The Commission continued a project begun unofficially — affixing to the town's earliest buildings plaques on which are noted names of original owners and approximate dates. In October of 1971, an offer by the Genealogical Society of the Church of the Latter Day Saints to microfilm all town records from 1633 to 1850 was accepted by the Selectmen, and the Commission assumed the responsibility of careful inventorying and safe handling so that records which are fragile can be made safely available to researchers.

The Commission is empowered by Chapter 40, Section 8D of the General Laws, to "acquire in the name of the town by gift, purchase, grant, bequest, devise, lease or otherwise, the fee or lesser interest in real or personal property of significant historical value" and to "manage the same." This power became crucial when, late in 1969, a combination of federal and local funds made possible in Ipswich a demonstration project in the use of easements in securing preservation restrictions.

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THE DEVELOPMENT OF THE PROJECT

To finance the costs of the Project, the United States Department of Housing and Urban Development agreed to provide a grant of \$21,375 with the stipulation that an equal amount be matched by the town or by some local agency. The Ipswich Heritage Trust agreed to raise the matching half. Members of the Commission jointly with trustees of the Trust then worked out a budget and employed a Director — John F. Cole, a man experienced in the real-estate market and expert in the architecture of the old homes of Essex County.

The scope of the Project was determined by two studies. One was an examination of the enabling law and its background; the other was the making of an inventory of Ipswich's old houses.

5

Legal Research— The Enabling Legislation

LEGAL STUDIES AND PRELIMINARY DECISIONS

WHILE work on the inventory progressed, the Director and members of the Commission undertook a study of the relevant case law, statutes and precedents, both to help in determining the form of Agreement to be used and to make sure that the best interests of the owners as well as of the town would be served. To assist with such studies, the Commission employed as a legal consultant Albert B. Wolfe, a lawyer who had acted as counsel to the Ipswich Heritage Trust in its formative period, and who was active in historic preservation matters as Chairman of the Cambridge Historical Commission and a member of the Massachusetts Historical Commission.

Use of less-than-fee interests for historic preservation outside of Massachusetts first came under review. Information on this subject came primarily from the National Trust for Historic Preservation.

The British National Trust for Places of Historic Interest and Natural Beauty proved to have had the widest experience with the use of less-than-fee interests for environmental protection. In 1937 an Act of Parliament permitted the Trust to hold and enforce “covenants” running with the land even though holding no appurtenant benefited land. Their forms use the word “covenant” to comply with that Act and with their conveyancing customs.

After study of the British precedents came an examination of the experiences of Charleston, South Carolina, and of Savannah, Georgia, with revolving funds and restrictive resale provisions, along with those of both the Virginia Landmarks Commission and certain Maryland organizations in acquiring “restrictions” or “easements.” The Virginia and Maryland experience is described in

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papers published by the National Trust from its 1971 Conference on *Legal Techniques in Preservation*.

Clearly there were two principal methods by which the goal of preservation was to be reached. The first of the two methods was the more familiar one of purchase and resale — the resale being conditioned by an Agreement, or covenant, undertaken by the new owner — to preserve those aspects of his house considered to be of historical significance.

It was obvious that few properties of historic interest in any preservable condition could be purchased on the extremely limited budget set by the Project. More than that, relatively substantial pieces of real estate cannot always be easily turned over to fit a schedule. The power to wait for a fair price and a sympathetic buyer must be given to the holder. Moreover, legal problems would arise if the Commission were to borrow money on mortgage, pledge public credit and sell public property. At the outset, therefore, the Commission gave up the idea of purchase and resale and devoted its attention to the purchase of less-than-fee Agreements — the second of the two methods.

The primary purpose of the members of the Commission from the start was to create a partner relationship with the owners, in order both to help them realize the unique character of the Ipswich heritage of old houses and to assist them in the work of preservation. It was this purpose that set the guidelines for the Commission's decisions concerning the form of the Agreement. They determined at an early point to seek a single form of Agreement, as simple, straightforward and fair as possible, so that the Project Director could negotiate directly with the owners and their advisors, and thus avoid the added time and expense of working out separate forms tailored to each property and each individual's situation.

The Commission also came to the decision that it would try to make the Agreement as brief as possible, leaving the unexpected to be acted upon by reasonable men guided by a general understanding rather than spelling out what should happen at some future time in unforeseeable circumstances. This meant that most of the precedents, both in and out of Massachusetts, for wording such Agreements could not be closely followed. The simple form which was finally developed left for individual specification only the owners' names, the address of the property and title reference, the date built and a listing of the features of each house judged to be worthy of an Agreement.

Legal Research

The experience of the Ipswich Heritage Trust had demonstrated that its detailed restrictions were not a deterrent to purchasers in obtaining mortgage loans. Indeed, in some instances the restrictions seemed to have been regarded by bank officers as a "plus," apparently because they felt that the Trust's recognition of historical significance would assure proper maintenance and hence a long-term retention of value. Thus the Commission found it unnecessary to approach mortgagees in advance, and instead asked the owners about their mortgages and checked their information at the Registry of Deeds.

THE BACKGROUND OF COMMON LAW

For an understanding of the legal problems involved in acquiring Preservation Agreements, the Commission relied upon its expert legal consultant. A summary of the studies which he made on behalf of the Commission makes more comprehensible the complex background of law which determined the provisions of the Agreement.

A principal deterrent to the use of less-than-fee interests for historic preservation throughout the English-speaking world has been, and is, the existence of the technical legal rules which were developed before our systems of recording and indexing deeds and making title searches evolved. These rules of Common Law were developed mostly by the English Courts in efforts to keep titles to land marketable and to prevent the landed gentry from tying up titles for the benefit of their own successors. The English to this day rely for title proof primarily on original deeds and affidavits of possession ("muniments of title") handed down from owner to owner and held by any first mortgagee in the interim. Thus they have no way of knowing what less-than-fee interests may be outstanding back of the chain of documents examined for each transaction. Until recent years the "chains" examined went back sometimes for centuries. Statutes have now limited their chains by recognizing, absent agreement to the contrary, a "root of title," which was originally sixty years and now, by Act of Parliament of 1969, has been reduced to fifteen years.

In Massachusetts the customary period of title search has until recently been at least sixty years to a good "root of title." Through

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a Massachusetts Conveyancers Association Title Standard this has been recently reduced to fifty years.

There are three English Court-developed rules restricting various less than “fee simple absolute” interests from “running with the land” so as to bind successive owners, that concern us particularly now:

1. That there must be “appurtenant” land that is benefited
2. That both the benefit and the burden must “touch and concern” both the benefited land and the burdened land in a manner that affects the land or its value rather than individual interests of respective owners
3. That the less-than-fee interest be not too much a “novel incident”

All were aimed at achieving free marketability of fee simple interests and at reducing the chance that examination of “muniments of title” and the inquiries involved in obtaining affidavits of possession would fail to disclose such less-than-fee interests.

In Massachusetts, indexing of deeds and other recorded instruments by grantors and grantees has been required since 1845. By 1905 the customary sixty-year period had elapsed and since then reliance has been more and more solely on recorded records and not on “muniments of title.” By the end of World War I the custom of relying on record title searches for each purchase and mortgage transaction had become almost universal in Massachusetts and most other states. Since that time it has not, as a matter of common sense and comparative equities, been unfair to hold purchasers and mortgagees to matters which appear in the customary chain of record title, even though of a type not meeting the three rules referred to above.

As these rules were first created by courts one might assume that courts alone could change them to meet the changed conditions, but courts have strongly resisted upsetting property rights already accrued in reliance on the earlier rules. In some states, the three rules were never fully recognized. In some states, courts have gone further than in others to protect purchasers and lenders who rely on properly indexed chains of title even though the indexes in many states are not yet by statute a part of the record.

One fairly common exception to the rules even from early days has

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to do with interests held by governmental bodies. With respect to restrictions, the United States Department of Housing and Urban Development, in its regulations governing disposition by urban redevelopment authorities, has long required the imposition of quite detailed restrictions, purported to be enforceable by the respective authorities for the duration of their "redevelopment plans." This necessarily is based on the Department's assumption that the Common Law rules referred to would no longer in any state prevent the authority from enforcing the restrictions even after it ceased to own land in the "project area."

The use of recorded restrictions for conservation of environment, whether manmade or natural, can hardly be considered any longer by any court as a "novel incident," especially in any state like Massachusetts which now has an amendment to its Constitution declaring the right of the people to "the natural, scenic, historic, and esthetic qualities of their environment" (Article XCVII of Amendments).

MASSACHUSETTS STATUTES

Three statutes need to be considered to understand the present Massachusetts legal status of the three Common Law rules and the legal basis of the Ipswich Preservation Agreements:

1. An 1887 Act limiting to thirty years restrictions otherwise "unlimited as to time" (now General Laws, Chap. 184, Sec. 23).

2. The Obsolete Restrictions Act of 1961 (General Laws, Chap. 184, Sec. 26 to 30) which, in order to encourage increasingly shorter periods of search, requires recording of notices — first in thirty years and then each twenty thereafter — in case of "Restrictions on the use of land or construction thereon" thereafter imposed, whether "by covenant, agreement, or otherwise," and which is often referred to as the Massachusetts Marketable Title Act.

3. The amendment of the Act by Chapter 666 of the Acts of 1969 (see Appendix C), the Conservation and Preservation Restrictions Act.

The 1887 limit of restrictions to thirty years is customarily avoided by specifying a longer time limit where one is really desired — fifty and seventy-five years being not unusual for new houselot developments, and one hundred or even two hundred years being oc-

Something to Preserve

casionally used in special situations. The key to the 1961 Marketable Title Act is Chap. 184, Sec. 26, which appears in Section 2 of the 1969 Act as thereby amended. The amendment excludes from the Marketable Title Act's notice-recording requirements any Conservation and Preservation Restrictions as defined by the new Section 31. The new Section 32 gives them immunity from some of the technical rules developed by English Common Law, including the one as to appurtenant land. The new Section 32 also excludes from the Marketable Title Act's notice-recording requirements "other restrictions held by any governmental body," body being defined broadly enough to include the Ipswich Historical Commission. These exclusions are made to depend either on the land being registered under the English Torrens System so that reference to the restriction will appear on the land parcel's Certificate of Title, or, if unregistered, on the restriction either being indexed under a new tract index system authorized by Section 33, or being kept alive after thirty years by recording of notices theretofore and before expiration of each succeeding twenty-year period. This last method is substantially the same as that used for restrictions not excluded from the Marketable Title Act, but without some of that Act's further complications.

It should also be noted that the notice-recording requirement can be avoided whenever the tract indexing is done, whether before the original thirty years expires or during any subsequent twenty-year period; that Section 1 of the 1969 Act excludes from the 1887 thirty-year limit any restrictions which have been approved as provided in the 1969 Section 32; that such approval can be obtained at any time even for restrictions previously recorded; that the Marketable Act recognizes that there may be restrictions held by a "person" (whether individual, corporate, or trust), which if stated to be for the benefit of the person may be enforceable whether or not the person owns any benefited land (Clauses (a) (1) of Sec. 27 — interests so held apart from land are sometimes said to be "in gross"); that the 1969 Act recognizes that such "in gross" interests may also be assigned or assignable (its Section 4, and reference "assignable or being assigned" in the first sentence of the new Section 32); and that the 1969 Section 33 makes provision for rules for administration of public restriction tract indexing being made by a majority of the Registers of Deeds with approval of the Attorney General.

The Agreement form first recommended by the Commission's

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legal consultant would have relied solely on the 1969 statute, but this recommendation was changed when he advised that in his opinion the desired Agreements could be enforced by the Commission even without the benefit of the new Section 32, for the reasons above set forth, and because of the possibility that rules for the new tract indexes might be delayed.

The Preservation Agreement form finally used makes a 2100 expiration date apply, but only if approval of the Selectmen and Massachusetts Historical Commission is not theretofore obtained. Of course if it is not obtained before the end of the thirty years, the notice-recording requirement must be met, and continue to be met for the rest of the nearly 130 years. The chance that better tract indexing will come before that time now seems more immediate (see Appendix F). The Registers of Deeds have yet to agree on tract index rules, and in the meantime a new statute (Acts of 1973, Chap. 602) permits adding the necessary notations to zoning maps instead, which obviates all further notice-recording requirements.

The Commission's legal consultant has advised that considerable expense might be saved if, at some suitable time in the future, all the Commission's Agreements might be submitted in one document for final approval by the Ipswich Selectmen and the Massachusetts Historical Commission before recording. Even more simply, the Commission could seek to get the approval of the Ipswich Planning Board to make notations of the Agreements on the next Ipswich Zoning Map — an action which would remove the necessity of fulfilling any further notice-recording requirements.

The term "Preservation Agreement" was finally chosen to fit best with the 1961 and 1969 Acts and yet to avoid the mystery of the usual legal nomenclature. Massachusetts statutes do not encourage use of the word "covenant," which primarily means only an Agreement under seal. "Easement" was discarded for similar reasons and for its possibly misleading association with "rights of way."

TAX CONSIDERATIONS

The Project Director and Commission were advised by their legal consultant that if questions about effects on owners' taxes should be raised, certain understandings of applicable law might be called to attention, but that owners should be urged to check these interpretations themselves or with their own advisors.

Something to Preserve

Because Preservation Agreements cannot be cut off by a sale for nonpayment of taxes under Massachusetts law (General Laws, Chap. 60, Sec. 45), the Ipswich assessors cannot legally ignore the Agreements' limiting effects on values, nor take into account values that might be realized by conversion of subject properties to commercial or other more remunerative uses. Furthermore, as a matter of long-term policy for the town and for the stability of its tax base, it is hoped the assessors would give every possible tax break to owners so as to encourage other eligible owners to enter into Preservation Agreements.

As to Federal income taxes, it is doubtful whether any substantial deduction would be obtainable for a gift of a Preservation Agreement, partly because of difficulties in establishing differences in value before and after, and partly because of a provision of the Internal Revenue Act of 1969 excluding deductions for gifts of "partial interests."

As for payments in purchase of Preservation Agreements, attention might be called to a Revenue Ruling (70-510) that a payment received for an easement for flowage is a reduction in cost basis and not required to be reported as a sale.

As for estate and inheritance taxes, a Preservation Agreement has an obvious limiting effect in precluding consideration of values based on possible conversion to other uses.

CONCLUSION

A few provisions of the Ipswich Preservation Agreement are direct responses to Massachusetts statutes, but most aspects of the form and the Commission's basic approach may serve as guides in other states. As far as tax considerations are concerned, it should be emphasized that legal advice should be sought for each individual case.

6

The Recorded Preservation Agreement

THE unique problem faced by the Ipswich Historical Commission in carrying out this Project was to devise a Preservation Agreement that would be suitable for use in Ipswich: an Agreement that would be a partnership between the Commission and the homeowner to preserve the architecturally significant features of his home, both exterior and interior. While the Agreement established binding requirements upon both parties, its basic purpose was to persuade each homeowner to accept voluntarily the obligations of preservation. And its corollary was to ascertain for the Project how many homeowners would be willing to accept such restrictions on the ownership of their property.

In the course of its development, the Preservation Agreement shrank from several pages to little more than one. There necessarily was some sacrifice of detail, but none to clarity. The Agreement is a simple statement of a joint purpose. The preliminary work proved well worth the time and effort when it came to conferring with the owners whose opinions were sought on the type of document they would be willing to sign. In one case, an owner expressed concern about a possible future disagreement between an owner and the Commission and suggested that an expert from out of town be named as arbiter. This led to the inclusion of the referee system in the eventual format. The Project Director went over each Agreement personally with each homeowner, who was welcome to consult with counsel if he wished.

Under the Agreement's provisions, the homeowner agrees not to permit any alterations to the designated interior or exterior features of his home. If he wishes to make any change, he must receive prior written approval of the Commission. If the Commission disap-

Something to Preserve

proves, the owner may request a review by a qualified person appointed by the Massachusetts Historical Commission. Of course, in the event of a serious disagreement that could not be resolved, either party would have the right to seek a ruling from the courts.

Though a number of owners were willing to make a gift of their Agreements, it seemed only fair to offer to those less committed to preservation a fee in return for their attention and signatures. The question of how to determine the fee then arose. To vary it according to the supposed architectural value of the property seemed to be tempting the owner to bargain. A uniform purchase fee was decided upon, the amount of \$1,000, which appeared, on the one hand, far from negligible and, on the other, little enough for a commitment of great value to posterity.

Though the Agreement offered and the fee involved, if any, were always the same, each house was of historic value for a different reason. There had to be flexibility. The form permitted the inclusion of specific reference to features of critical interest. At the same time, it made due allowance for the owner's natural desire and need to improve his operating equipment, to make necessary additions to living space, and, in general, to maintain his property. The aim of the Project was not to embalm, but to encourage and ensure the harmonious use of each dwelling, thereby fortifying its durability and increasing its value. In the experience of both the Commission and the Heritage Trust, the presence of a preservation clause in a deed to property has tended to increase its value, as a guarantee of its architectural authenticity.

The Agreements were eventually signed by sixteen owners of first quality houses: eight of them were given without the payment of money;* the remaining eight were accompanied by equal amounts of \$1,000 each. The signing was an historic achievement; it marked the beginning of a government-supported effort at preservation. For the Project, it meant that the Commission had been able to devise a Preservation Agreement which the homeowners were willing to accept.

Were there any difficulties in the negotiations? Surprisingly few. Three fine houses which the Commission would have liked were refused to them, probably because of the owners' distrust of any re-

*Four of the covenants given without payment of money were given by members of the Historical Commission.

The Recorded Preservation Agreement

strictions. Otherwise, there was a ready understanding and acceptance of the Agreement provisions. Ten of the sixteen homeowners signed within a brief period.

The planners of similar preservation projects may find the content and the format of the Ipswich Agreement useful. It should not be uncritically copied by other communities but adapted to the local situation and the provisions of state and municipal law.

The Preservation Agreement guide-form which was used for the Project follows, together with comments on its provisions and use, keyed to the reference line numbers.

AGREEMENT USED BY THE IPSWICH HISTORICAL COMMISSION

PRESERVATION AGREEMENT

owner of premises
at , Ipswich, Essex County, Massachusetts
upon which is a house built about
evaluated by the Historical Commission of the Town of Ips-
wich (the Commission) as having significant historical
architectural value and being especially worthy of preser-
vation, in consideration of \$ paid and such technical
advice and assistance as the Commission may render, hereby
agree for and heirs and assigns as owner of said
premises with the Town of Ipswich not to permit any
alterations to be made to the following exterior and interior
features:

unless with prior written approval of the Commission, which shall not be unreasonably withheld. The Commission shall act upon written request for such approval within thirty days of its receipt, and shall give notice of any disapproval to the owners in writing with reasons. If a request for approval is not disapproved by the Commission within thirty days, it shall be

Something to Preserve

deemed approved. In case of disapproval the owners may
within thirty days after the notice of disapproval request a
review of the disapproval by a person of competence and
experience in such matters, designated by the Massachusetts
Historical Commission or its chairman or acting chairman.
The finding of this review shall be made in writing within sixty
days after the request, and shall be binding on the owners and
the Commission. The cost of such review shall be shared by the
Commission, unless otherwise provided for but its share shall
not exceed one-half the cost or one-half of one per cent of the
assessed valuation of the building in question, whichever is
lesser.

Ordinary and necessary repairs and maintenance not
materially affecting features listed above shall not be con-
sidered alterations. In case of damage by fire or other casualty so
serious as to cause reconstruction to be reasonably adjudged to
be impractical, this agreement shall terminate, and otherwise
shall remain in effect until 2100 A.D., or if approved by the
Board of Selectmen of the Town of Ipswich and the Mas-
sachusetts Historical Commission, without limit of time.

The Ipswich Historical Commission acting on behalf of the
Town of Ipswich pursuant to General Laws, Chapter 40, Sec-
tion 8-D hereby accepts the above agreement.

Witness the execution hereof under seal in duplicate this
day of 197

IPSWICH HISTORICAL COMMISSION

By _____
Chairman

COMMONWEALTH OF MASSACHUSETTS

Essex, ss 197 .

Then personally appeared the above-named and
and acknowledged the foregoing instrument

The Recorded Preservation Agreement

to be free act and deed, before me,

My Commission expires:

Notary Public

COMMENTARY AND ANALYSIS OF THE AGREEMENT

Lines 1-8

	owner of premises	1
at	, Ipswich, Essex County, Massachusetts,	2
		3
	upon which is a house built about	4
evaluated by the Historical Commission of the Town of		5
Ipswich (the Commission) as having significant historical		6
architectural value and being especially worthy of		7
preservation,		8

The first four lines permit proper identification of the owner or owners of record as identified in the recorded deed to the property. The owner was asked to provide a title reference. This was checked in the Essex South District Registry for accuracy. The grantor indexes and the recitations in the title source were checked to the date of recording for any transfers in whole or in part and for any mortgages outstanding. The date listed in line 4 was supplied by the person responsible for evaluating the property or was a matter of available historical record.

Lines 8-13

	in consideration of \$ paid and such	8
technical advice and assistance as the Commission may		9
render, hereby agree for and heirs and assigns as		10
owner of said premises with the Town of Ipswich not to		11
permit any alterations to be made to the following exterior		12
and interior features:		13

Something to Preserve

Whether or not any fee in consideration is paid (line 8) depends on the availability of funds, the policy adopted and the individual situations. The Ipswich Historical Commission made a number of voluntary Agreements during this Project, as it has been previously stated. In each case when a fee was paid, there was a discussion with the owners of the problems of future maintenance, and there evolved a general understanding that the money would be spent on the features of the house that required most prompt attention.

The possibility of providing technical advice and assistance is considered a vital part of the Agreement (line 9). As a consequence, the Commission feels it has some responsibility for developing and utilizing professional knowledge in advising owners concerning planned changes. As a first modest step toward this end, the Commission has worked out a simple Home Owner's Guide which has been included in the Appendix.

Line 10 is legal phraseology which means that the Agreement is binding after ownership changes.

Line 11 states that alterations cannot be made to designated features without Commission permission.

All the Preservation Agreements took note of the exterior of the buildings covered. In general, owners were willing to include in the Agreement surfaces visible from a public way. In some cases plans for alteration were under consideration, and suitable change in a particular facade was provided for if, in the opinion of the Commission, such a change did not detract from its architectural and historical authenticity.

A major element in the protection of the interiors of the Ipswich houses was the inclusion of the central structural frame as part of the Agreement. The frame is an important visible detail in seventeenth-century houses. The various kinds of medieval joining techniques used in these earliest houses are the subject of increasing study by experts on the "vernacular" in seventeenth century American architecture; thus, particularly in the earliest houses, the frame is important in itself. Most important, the frame represents a substantial proportion of all wooden material and indicates the evolution of the dwelling. Control over change in the frame permits the Commission to render technical service in the areas of preservation, against moisture and water damage, and also helps to assure preservation of the exterior shape of the house, which would be affected if — for example — a roof line were raised.

The Recorded Preservation Agreement

In treating interior detail, the Commission felt it necessary to limit protective restrictions to conspicuously important features. This often meant the inclusion of a wall of paneling, which can effectively be photographed, located and accounted for. The Agreement does not, on the other hand, restrict treatment of the surface such as painting. Maintenance of profile detail is the chief goal. If an attempt had been made to regulate color and wallpaper, a number of Agreements would not have been signed. In the event, however, that a painted pattern from the first or second period were found, the Commission would hope to insure that it not be obliterated.

Some owners would have included control of every interior detail but that seemed too complicated. In certain cases — a front hall, for example — every feature was included because the hall contained an abundance of detail typical of its period. The Ipswich interior restrictions concentrated on period wooden detail because it is easily identifiable, and the interior features of houses in Ipswich are principally of wood. Floors were not included, since they wear out and must be replaced as a matter of course.

Lines 14-20

unless with prior written approval of the Commission, which	14
shall not be unreasonably withheld. The Commission shall act	15
upon written request for such approval within thirty days of its	16
receipt, and shall give notice of any disapproval to the owners	17
in writing with reasons. If a request for approval is not disap-	18
proved by the Commission within thirty days, it shall be	19
deemed approved.	20

To be effective, any requirement for prior written approval (line 14) should facilitate discussion between owner and the Commission before alterations are made, and create an administrative record for the Commission. As stated in line 15, approval “shall not be unreasonably withheld.” This phrase has been interpreted by courts and puts upon the Commission a responsibility not to act in an arbitrary manner. Lines 14 through 20 further require the Commission to justify and to clarify any denial of approval, and requires, for the homeowner’s protection, an answer in writing.

Something to Preserve



From a sketch by John Warner Barber, published in 1839

Central Ipswich in the 1830s



Ipswich Chronicle

*The same area in the 1970s
Though the churches have changed, many
of the surrounding buildings are the same.*

The Recorded Preservation Agreement

Lines 20-31

In case of disapproval the owners may	20
within thirty days after the notice of disapproval request a	21
review of the disapproval by a person of competence and	22
experience in such matters, designated by the Massachusetts	23
Historical Commission or its chairman or acting chairman.	24
The finding of this review shall be made in writing within sixty	25
days after the request, and shall be binding on the owners and	26
the Commission. The cost of such review shall be shared by the	27
Commission, unless otherwise provided for but its share shall	28
not exceed one-half the cost or one-half of one per cent of the	29
assessed valuation of the building in question, whichever is	30
lesser.	31

Lines 20 through 31 evolved from a request by an owner for outside-of-town participation in the arbitration of disputes. A time limit is again placed on the resolution of such a matter, thus inhibiting delaying tactics by either side. The Commission is protected by having its share of the cost limited to no more than one-half of one per cent of the assessed valuation of the building in question. Thus, if the building is valued at \$20,000, the Commission's share of the cost for any review could not exceed \$100. Pegging this share to assessed valuation allows fluctuation — to cover inflation (or deflation) of currency levels. However, the arbitration provision may be more psychological than totally protective, for if a serious disagreement should develop, it may not guarantee against resort to court despite the recitation of finality. The Acting Chairman of the Massachusetts Historical Commission at that time gave informal assurance that such designating role would not be declined by the Commission in the case of this Project because it seemed important that the technique be tested. However, if, at some future time, the Massachusetts Historical Commission should refuse to act or be unable to designate an arbiter, the Commission may resort to an appropriate amendment substituting some other appointing agency, public or private, or to court petition to reform generally or appoint in the specific instance.

Something to Preserve

Although at the time the Agreements were signed the American Arbitration Association was not prepared to provide panels of arbitrators qualified in architectural history and preservation matters, it is understood that it is now so prepared. The possibility of dealing with arbitration and other possible future needs by administrative rulings in due course have also been considered.

Lines 32-42

Ordinary and necessary repairs and maintenance not 32
materially affecting features listed above shall not be con- 33
sidered alterations. In case of damage by fire or other casualty so 34
serious as to cause reconstruction to be reasonably adjudged to 35
be impractical, this agreement shall terminate, and otherwise 36
shall remain in effect until 2100 A.D., or if approved by the 37
Board of Selectmen of the Town of Ipswich and the Mas- 38
sachusetts Historical Commission, without limit of time. 39

The Ipswich Historical Commission acting on behalf of the 40
Town of Ipswich pursuant to General Laws, Chapter 40, 41
Section 8-D hereby accepts the above agreement. 42

Lines 32 and 33 permit the normal corrections necessary to repair or replace deteriorated elements. "Alteration" is defined as excluding maintenance, thus removing a potential administrative burden from the Commission. Lines 34 through 36 provide for the nullification of the Agreement should a major fire occur. Whether or not reconstruction would be warranted would center around a professional judgment of the amount of period material remaining and the ability of the owner to rebuild. Lines 36 to 39 are explained in Chapter Five in the discussion of the 1969 Conservation and Preservation Restrictions Act.

Lines 40 to 42 record the acceptance of the Agreement by the Ipswich Historical Commission for the town of Ipswich under the authority given to it by Chap. 40, Sec. 8-D of the General Laws.

The witness and acknowledgment clauses at the end are conventional for Massachusetts recorded Agreements.

7

Three Examples

SPECIFIC examples of detail covered by the Preservation Agreement in first-period (pre-1720), second-period (Georgian), and third-period (Federal) houses follow:

FIRST-PERIOD HOUSE

The Agreement for the Philip Call House, built circa 1659, contains these provisions:

. . . not to permit any alterations to be made to the following exterior and interior features:

All front and side exterior features of the building; The central frame including primary and secondary members; The wooden architectural elements including if any, paneling, mantelpieces,

Philip Call House: Chamfered summer beam



Something to Preserve

doors, and other molded detail on the first and second floor inner walls of the original 1659 dwelling; unless with prior written approval of the Commission . . .

In this case the owner was willing to include coverage of the front and sides of the dwelling. Alterations all the way up to the roof ridge are covered. Additions may be made to the rear. It also allows any color of the owner's choosing. Most owners wanted to retain the right to expand living space and to choose paint color, and in a number of instances Agreements would not have been obtained without this flexibility.

Coverage of the central frame is particularly important in this first-period house as it is not only an integral part of the structure but a major decorative element as well, carefully carved and meant to be seen. The phrase "primary members" refers to the major supporting elements such as sills, cornerposts, and principal rafters. "Secondary members" includes studs, joists, and window sills. If a house frame contained a quarter-round chamfer on its summer beam, the owner would be prohibited under this Agreement from altering that chamfer but could paint it as he wished. The inclusion of the frame in this way was first undertaken by the Ipswich Heritage Trust in earlier Preservation Agreements.

Changes in the frame are often necessitated by the need for major structural repairs — of sills, cornerposts, or studs. The Commission hopes that as the technology of repair and preservation maintenance improves, the dialogue between owner and Commission will include more effective steps toward long-range preservation beginning at the "heart" of these old buildings.

In the case of the Philip Call House the owner was willing to give blanket coverage to material in the earliest section of the structure, but did not wish to be restricted in areas of later detail. The problem of what to do if later trim covers a large fireplace or a hidden wall of paneling emerges in treatment of a first-period house; a museum restoration in North Andover, Massachusetts, gets the best of two worlds by swinging out a wall of raised-field panels on hinges to reveal the larger fireplace underneath.

*Opposite: Double-paneled door
from the Philip Call House*





Day-Dodge House: Second story corner room paneling

SECOND-PERIOD HOUSE

The Agreement for the Day-Dodge House (Circa 1720) read in part as follows:

. . . not to permit any alterations to be made to the following exterior and interior features:

The two facades facing North Main Street and East Street, excluding the south attached two story ell; The central frame including primary and secondary members of the original 1720 six room dwelling; The wooden architectural elements of the central hall facing North Main Street, including if any, the stairway, paneling, doors and other molded detail; The wooden architectural elements including if any, paneling, mantelpieces, doors, and other molded detail on the inner wall of the second story corner room of the original 1720 six room dwelling;

unless with prior written approval of the Commission. . . .

Three Examples

In this instance the owners excluded the south ell because of the prospective need for demolition and would not have signed had the Commission's negotiator insisted on including it. The central frame is included mainly for structural purposes as the frame is hidden in living spaces later than the original building.

The phraseology relating to the central hall permits brief coverage of all architectural elements there. The next sentence is restrictive to

Day-Dodge House: Central Hall



Something to Preserve

one wall (i.e., a single plane). This policy of focusing on the best elements carries with it an implicit philosophy: if care is taken with the best elements, care will also be taken with the rest. The Commission's job of administering a continuing relationship with each holder of an Agreement is also clarified and simplified.

In this particular case, the owner excluded a first-floor wall of paneling because of the possibility that a great fireplace might be opened up behind it.

THIRD-PERIOD HOUSE

The Agreement for the Rectory, the John Gaines House, reconstructed in the main about 1800, selects these architectural features for preservation:

. . . not to permit any alterations to be made to the following exterior and interior features:

The front and side facades of the dwelling;

The central frame including primary and secondary members;

The wooden architectural elements including paneling, mantelpieces, doors, and other molded detail in the two front first floor rooms;

John Gaines House: Dentil molded cornices.

Opposite: Firepl.



Three Examples

The wooden architectural elements including the stairway, paneling, doors, and other molded detail in the central hall of the dwelling;

unless with prior written approval of the Commission. . . .

In this Agreement, interior detail introduced much later than the original dwelling (1725) is the focus of control on the inside. The two rooms embodying this Federal detail are treated in blanket fashion in the manner of the central hall mentioned in the previous example. Whereas in Georgian houses the decorative detail is often confined to the fireplace wall, this room of a later period also contained reeded wainscoting. The wainscoting bears to the whole a stylistic relationship that would be endangered were it left out of the Agreement.

Sixteen early homes of prime quality, many of them commanding conspicuous sites in the center of town, have been secured to the future by means of these Agreements. Out of twenty-two owners approached, sixteen signed, which suggests that, in the second half of the twentieth century, acknowledgment of the need for historic



Something to Preserve

preservation has to a considerable extent overcome the natural resistance to legal encumbrance. Most owners welcomed the Agreements as a recognition of their home's value, and seemed gratified that an official and organized body existed to assist their private efforts at preservation. This was encouraging, in a town whose town meeting had twice defeated a proposed historic district. With these Agreements a basis has been laid for the preservation of one town's architectural heritage.



Day-Dodge House: Detail of trim

8

The Inventory

IN preservation, there must always be selection; everything old cannot be saved just because it is old. There will always be doubts, disagreements and regrets. In addition, as time goes on, as more research is done, and as changes are made to structures, new and perhaps contradictory evidence will come to light. There are, however, a few simple rules to lend guidance.

The first of these is the one applied by Noah: Save a couple of good working models of each creature. Secondly: It is better to preserve by selection what has already been well preserved by chance and by use than to reconstruct by conjecture that which has been neglected beyond the point of reasonable recovery. Thirdly: Grace of architectural form has a value in itself but its greatest value comes when its presence and setting suggest its uses and charms for its earliest owners. That point of view of course leads to neighborhood preservation, but whole neighborhoods are not usually easy to preserve. In most cases the best solution is to provide for appropriate and productive continuing use for that which has proved its value in the past. Such principles as these can only be usefully applied in the light of a full knowledge of the desirable choices. Consequently, in Ipswich a prime essential for the undertaking was an inventory of all the period buildings in the town built prior to 1832 and a determination as to which structures were of significant architectural value and would thereby qualify for the negotiation of protective Agreements. The decision to limit this inventory to pre-1832 structures included a recognition of the need to protect the oldest buildings first and of the fact that the scope of the Project was limited by the modest funds at the Commission's disposal.

Each building was newly inspected from attic to cellar by the Project Director. Architectural Worksheet and Building Data forms were

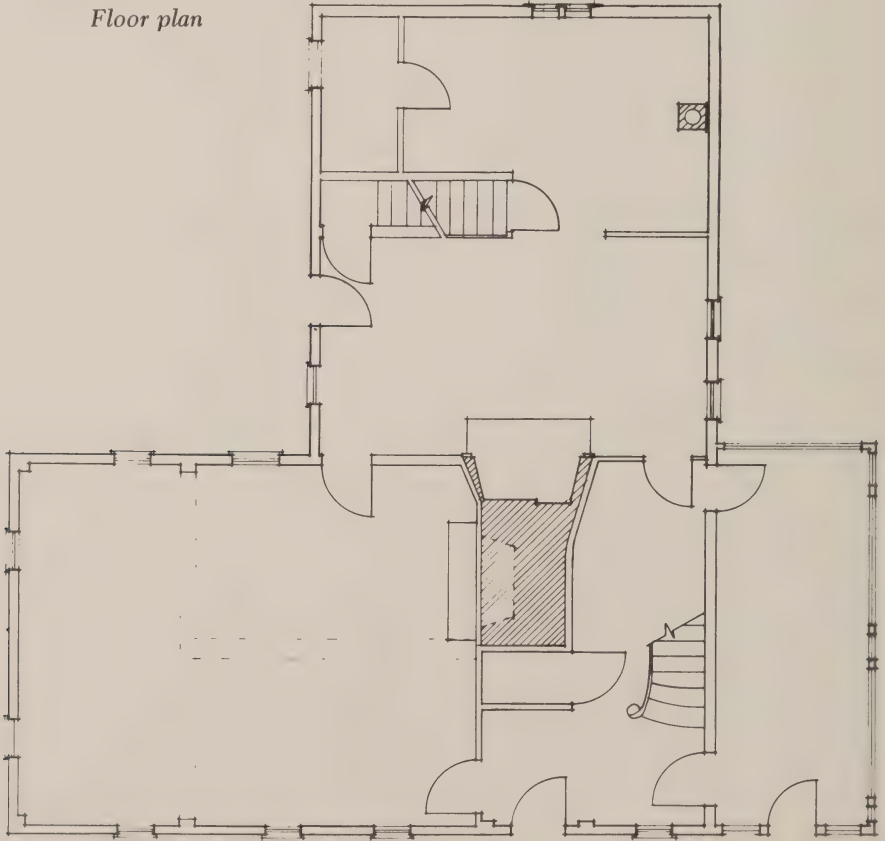
Something to Preserve

filled out to serve as a permanent record of the inspection and the condition of each house inspected. Many drawings were made, and many black-and-white photographs were taken. In all about 170 houses were examined; only a half-dozen owners refused entry or greatly restricted the inspection. Most Ipswich homeowners were genuinely interested and cooperative. They were eager to learn whatever a trained professional could tell them about their homes and were willing to provide any information they possessed.

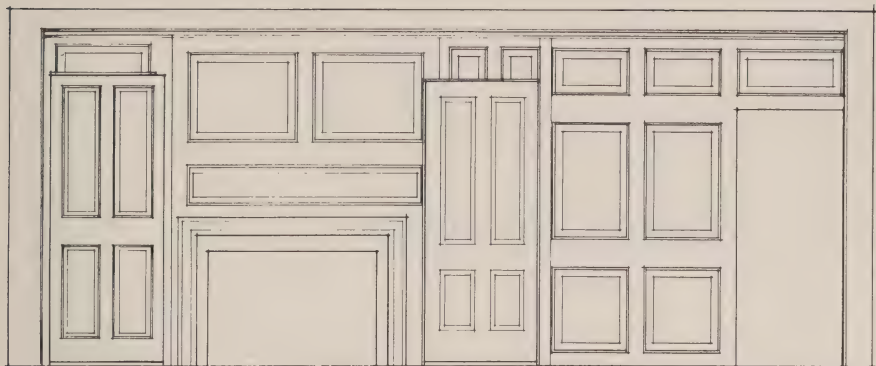
Each house was ranked on the quality as well as the amount of period material remaining. In almost every case a simple measured floor plan sketch was made. Because Ipswich possesses so many first-period buildings containing framework of medieval style, the Director established a method of classification that described structure as well as detail. Judgments on a numerical scale were assigned to each

Philip Call House:

Floor plan



The Inventory



Philip Call House: Raised-field paneling

exterior facade and to each interior spatial area as defined on the floor plan. Any house having material ranked in the excellent or exceptional class was given a more detailed description, with the material coded and located on the floor plan.

The following case study is an example of one particular house, the Philip Call House. The floor plan indicates a one-over-one seventeenth-century original structure, along with the probable location of the original chimney (see opposite). An early chamfered frame is visible in both rooms up and down, a further indication of the original seventeenth-century work. The second story revealed remarkable raised-field paneling in reddish color, which was judged to date from about 1720, the bold scale of its dimensions distinguishing it from the more typical raised-field paneling of the later eighteenth century. The fine quality of the framing and paneling in this house supported high marks in the ranking scale. Further inspection indicated that the building was in excellent condition except for a major crack in the original chimney girt. A similar investigation was made of each house entered and was duly recorded.

The completed inventory revealed fifty-eight houses judged to have been built in the first period (pre-1720), fifty-eight houses in the second period (1720-1790) and fifty-four in the third period (1790-1832). The qualitative evaluation sifted out a first group of twenty-two buildings to be recommended for recorded Agreements, and negotiations for these were begun immediately. Sixteen owners eventually signed Preservation Agreements that were recorded. These houses are more fully described in Chapter Nine. For the technical and architectural terms used there, refer to the Glossary.

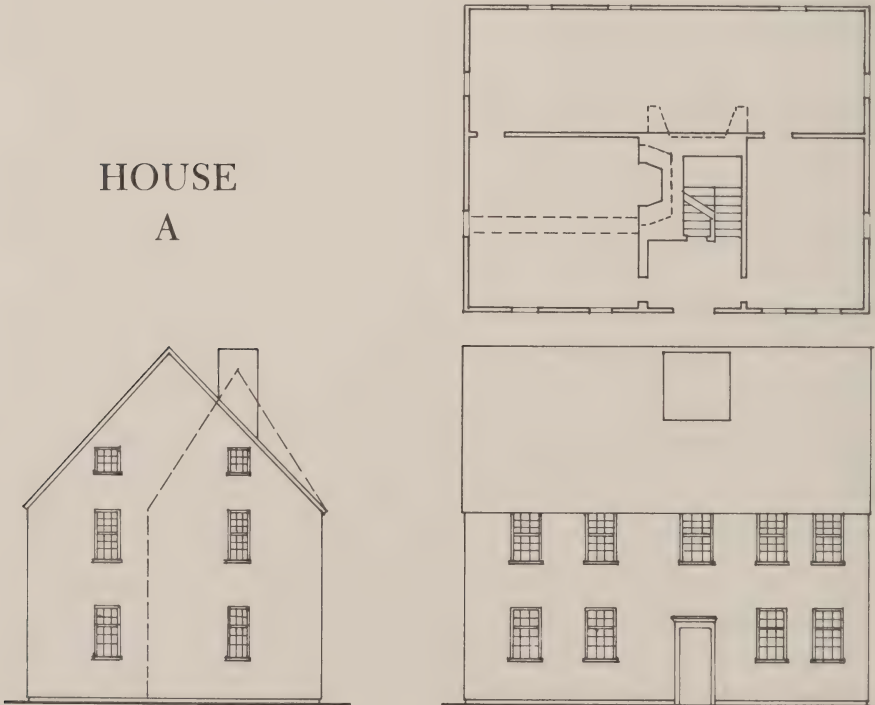
9

The Covenanted Houses

IDENTIFICATION OF EARLY HOUSES

THE recognition of a first-period building hidden under layers of later detail must rest principally upon visual sighting of existing features. Chimney proportions and placement as viewed from the exterior may indicate the existence of an earlier house buried within the facade of a dwelling "improved" and enlarged in the mid-eighteenth century. For example, in the front

HOUSE
A

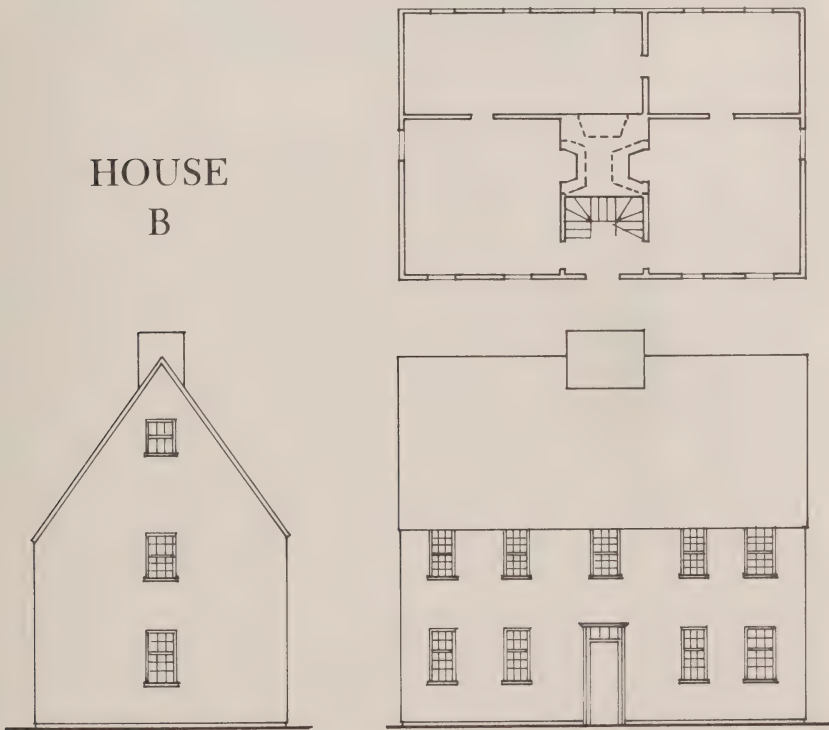


The Covenanted Houses

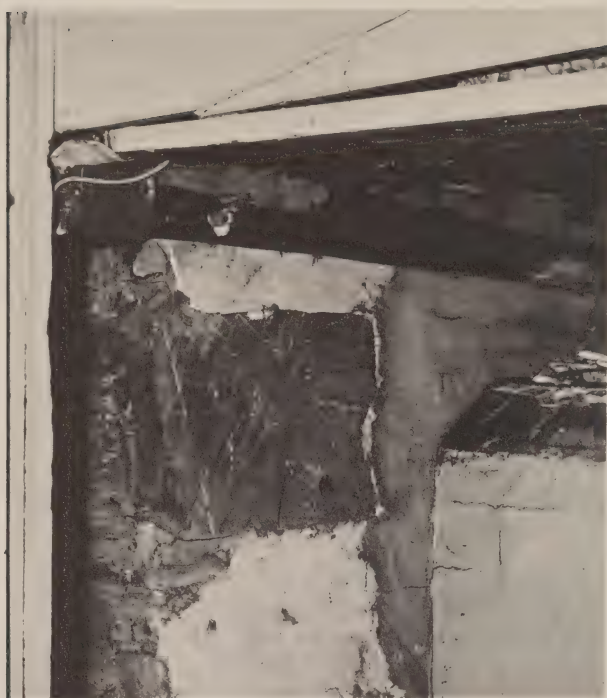
elevation sketch of house “A” shown in the diagram, the chimney is below the ridge and not centered. The chimney position indicates the possibility of early additions to the house both in width and depth (see dotted lines indicating original wall and roof location and profiles). This suspicion of growth by stages is further confirmed by the uneven window spacing seen in front and side views. That evidence is even more convincing when house “A” is compared to the chimney placement and window spacing of a dwelling entirely built in 1750 and not “modernized” from a pre-1720 dwelling (see house “B”).

However, interior inspection may be the only way to confirm suspicions of an earlier building. Most of the original material may be on the inside, protected from the weather. Indeed, the telltale chimney may be gone or not original, and other aspects of the original facade completely hidden by modernization — whether eighteenth century or later.

Once inside, the architectural historian concentrates on four areas. First, the layout and dimensions of the floor plan; second, the



Something to Preserve



Day-Dodge House: End of lintel beam

existence or absence of an exposed interior frame; third, the proportions and size of existing fireplaces; and fourth, the configuration and style of visible trim (i.e., paneling, stairway and other molded detail). The evidence revealed by these areas of concentration often indicates the pattern of a particular time. For example, in entering house "A," the inspector would note the width (almost nine feet) of the central hall, large enough to have held a great chimney whether it was there or not. Upon entering the front room on the left he would note its massive dimensions, eighteen feet by eighteen feet, which is typical of first-period houses. Overhead might appear a large beam with quarter-round chamfering (see illustration, page 35 — the Philip Call House) which would confirm conjecture of a pre-1720 structure. The visible fireplace wall might carry 1750 paneling (applied later) and a contradiction to the pattern, but the inspector needs to know what lies underneath. Hence he would look up the chimney flue to see if an enormous throat for a walk-in fireplace, now bricked up, is there. Even if the original throat were hidden, the cellar entry at the top of the cellar

The Covenanted Houses

stairs might reveal evidence of a large fireplace if the end of the lintel or carrying timber over the face of the hidden fireplace remained visible, lodged in the front wall of the chimney (see photo opposite).

When the frame is covered and the chimney gone and only the floor plan suggests an earlier origin, the inspector has a last resort: the cellar or the attic. The cellar is often of limited assistance as the house above may not be its contemporary. Such is not the case in an attic. Attics can reveal uncovered framing and show earlier roof-lines. The Merchant-Choate House (see overleaf) revealed an early type of roof construction known as "principal and common rafter, principal purlin construction," in contrast to the more common West Anglian or "principal rafter and common purlin construction," seen generally in second-period houses in Eastern Massachusetts. Finally, attics may show structurally where an original roof ended or was raised. It should be said, however, that the analysis of structural framing is not always indicative of a particular point in time. Conservative housewrights may have used older methods of joining. In addition, regional consideration must be taken note of; "frontier" builders often employed earlier ways of framing. In any case, an early-framed attic will certainly contrast with later detail below, particularly when the frame is hidden below the first- and second-story levels.

Instead of signs suggesting an earlier building behind the facade of a later one, the earmarks may be of an essentially unaltered original 1750 dwelling: balanced proportions, a narrower hall area, a plastered ceiling revealing no exposed frame, and smaller fireplaces with slanted sides and small throat and perhaps an iron lintel, and raised-field paneling and trim. The attic would be intact without evidence of structural changes.

Each house surveyed was ranked on the quality as well as the amount of period material remaining. The findings were reviewed by Dr. Abbott Lowell Cummings, who was appointed to this task by the Massachusetts Historical Commission.

All other things being equal, a seventeenth-century house should be ranked over one built a hundred years later, simply because there are fewer remaining. Often, however, the basis for a decision on the comparative quality of houses is by no means clear cut. Fine typical eighteenth-century work may outrank crude and less significant work from an earlier period. As often as not, the eighteenth-century



The Covenanted Houses

“improvements” to a seventeenth-century house are of as much interest as the earlier features they conceal.

One great wall cupboard with unique and finely carved detail might qualify a structure as more significant architecturally than a building with, say, two average walls of typical raised-field paneling. Accordingly, the houses thought worthy of Agreements in Ipswich should be described in some detail for those who want to know just what the Commission selected, why, and what they look like.

What follows is an illustrated tour of the Ipswich houses covered by Preservation Agreements. It can be traversed in the pages of this book or, better, can be taken in the town itself with book in hand. If the one distant house is omitted, an hour or so on foot will complete the tour. On a cool, sunny day in spring or fall, it will be a pleasant walk. For a few weeks in high summer a locally famous insect, the greenhead fly, which should be recognized by the Commission as an ally in the preservation of Ipswich, may discourage the visitor. Its bite is startling but nontoxic. The houses are “working” houses. Most cannot be entered, but some of the unusual features within are pictured. The visitor need bother no one.

Benjamin Kimball House: Latch





The Choate Bridge

A TOUR OF THE HOUSES COVERED BY PRESERVATION AGREEMENTS

It seems appropriate to begin the tour at the stone-arched Choate Bridge on South Main Street, the earliest of its kind in English-speaking America. Col. John Choate planned and supervised its construction in 1764 (see photograph). He was a representative to the General Court of Massachusetts from Ipswich and had been an officer in the French and Indian Wars. This bridge has been protected as a Massachusetts Historic Landmark since 1965.

Walking over the bridge toward the South Green, we see on the left the John Heard Mansion, a Federal edifice built around 1795 and now owned by the Ipswich Historical Society. Also known as the

The Covenanted Houses

Waters Memorial in honor of the town's pre-eminent historian, Rev. T. Franklin Waters, it is open to the public. Across the street stands a much earlier dwelling, the John Whipple House, built in the middle of the seventeenth century, and a National Historic Landmark (see photograph). The South Congregational Church, opposite, was constructed in Greek revival style in 1838, and presently serves as a social and recreational center for the young people of Ipswich.

These commanding structures of three different periods look down on the South Green, a microcosm of the social and architectural history of the town. Originally a number of seventeenth-century houses belonging to eminent early inhabitants, Rev. John Rogers, Nathaniel Ward and Ezekiel Cheever, stood in this area; they have disappeared, and houses of Georgian, Federal and later styles, as well as a mid-eighteenth-century cemetery, border this ancient "trayning field."

The John Whipple House



Something to Preserve

The Col. Nathaniel Wade House — 78 County Road

Across from the South Cemetery stands an unusual and imposing gambrel-roofed dwelling built about 1727: it was the home of Col. Nathaniel Wade, a gallant soldier of the Revolutionary War (see photograph). In its attic and on the nearby Common, Colonel Wade drilled his first company of Minute Men and from this place led them to help in the pursuit of retreating British soldiers after Concord and Lexington and then, two months later, to the battle of Bunker Hill. When Colonel Wade's regiment, which numbered many Ipswich men, was stationed at West Point at the time of Benedict Arnold's treason, General Washington ordered him to



*Wade
House:
Attic
with
ridge
rafter*



The Col. Nathaniel Wade House

succeed Arnold. After Washington had become President, Colonel Wade had a part in welcoming him to Ipswich in 1789, and he lived to extend a joyful reception in 1824 to his old friend, Lafayette.

Colonel Wade's home, now a large structure of many rooms, has seen many renovations which have left little trace of the original floor plan. It has a magnificent paneled fireplace wall and multipaneled doors in the grand room on the first floor. In the second-floor bedroom there is a fine paneled fireplace wall with bolection molding around the fireplace opening.

Particularly interesting attic construction is visible in that section of the house facing the Green. It contains unusual ridge rafters (see photograph) and clear evidence that the roof was raised some years after the original house was built.

The tour now reverses its direction and turning again northward passes on the right a row of Federal houses. At this point we come to Argilla Road which leads from the Green to Castle Hill and



The Smith House

The Heard-Lakeman House



The Covenanted Houses

Crane Beach. The road winds through the Ipswich countryside, passing a few especially fine early houses. About two and one-half miles (not an easy walking distance!) from the Green is the Smith House, built in 1725.

The Smith House — 164 Argilla Road

The Smith House is a classic example of the very late first-period country integral leanto (see photograph). The original floor plan contained two rooms in front and a great kitchen keeping-room area in the rear, all built at the same time.

The chimney structure appears to be completely original. The large kitchen fireplace is located in the keeping room area in the rear, and smaller fireplaces are in the front areas. A mixture of stylistic influences is seen in early exposed chamfered summer beams in the first floor juxtaposed against more formal raised panels on fireplace walls and a hand-turned balustrade in the front hall leading to the second floor. Upstairs, fine country vertical feather-edge sheathing exists on fireplace walls, in contrast to the more formal detail in the first floor and hall areas.

Much of the interest in this house centers on the mixture of material and the fact that there is so much of it. The interior is almost wholly original. Added to this, the site is a beautiful New England country setting.

Returning to the South Green, the tour now turns right at the corner of County and Poplar Streets in front of the church and continues to Poplar and Turkey Shore Road, reaching the Heard-Lakeman House, built about 1776.

The Heard-Lakeman House — 2 Turkey Shore Road

The Heard-Lakeman House, viewed from the exterior, is a typical center-chimney dwelling of the mid-eighteenth century (see photograph). It is located at the beginning of the ancient riverside way known as Turkey Shore Road. The interior contains fine raised-field paneling and a handsome Georgian stairway with turned balustrade. A very unusual feature is the great arched chimney

Something to Preserve

base, over eleven feet in length, certainly one of the largest in Essex County. The length of the base supports two fireplaces on each side of the great chimney and is in itself an unusual feature. There are usually three fireplaces on the first floor, the third being in the great keeping room in the rear, as in the Smith House.

Across the street is the Burnham-Patch House, built about 1730.

The Burnham-Patch House — 1 Turkey Shore Road

The Burnham-Patch House was much more difficult to date than the Heard-Lakeman dwelling. Whereas the Heard-Lakeman House had been built in one piece, with all the evidence pointing to the third quarter of the eighteenth century, the Burnham-Patch House has had many changes. Important evidence, which would help to date it, is hidden in the walls. Moreover, the existing visible evidence in this structure appears contradictory; a judgment as to its age is necessarily conjectural.

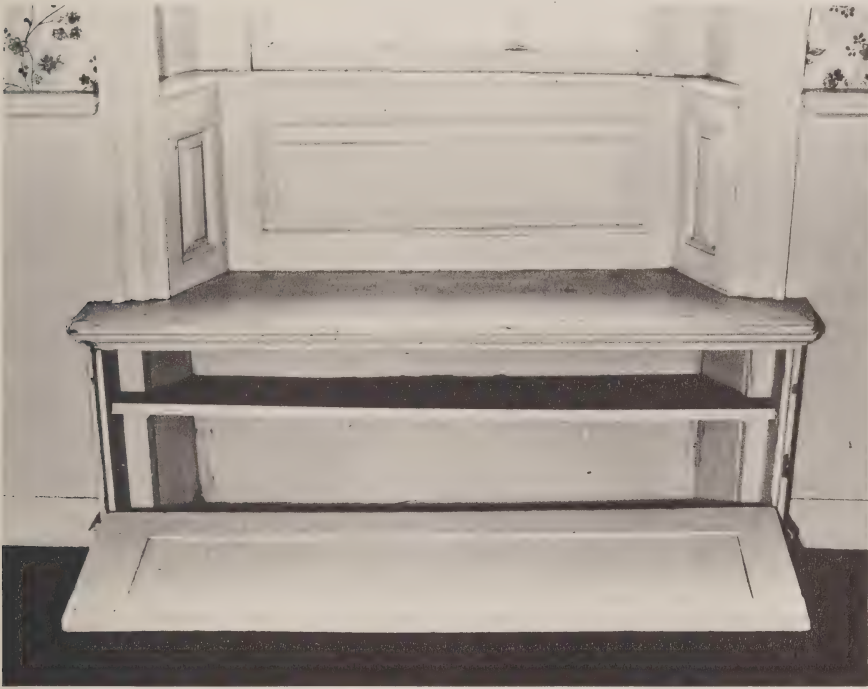
The floor plan is not balanced but contains rooms of varying dimensions. The section facing Turkey Shore Road is the earlier

The Burnham-Patch House



The Covenanted Houses

part. The large ell added later along Poplar Street is early nineteenth-century in style. The cellar under the old part contains heavy chamfered framing which could be as early as the 1670's, and was probably re-used from an earlier building which stood on or near the site. The upper two stories of this section contain molded detail ranging from mid- to late-eighteenth century (see photographs). The attic roof construction contains evidence of an



East Anglian principal-purlin type roof construction which could have roofed a house of the seventeenth century but may be the work of a conservative housewright in the mid-eighteenth century. Mortise joints to receive the purlin (now gone) may be seen in the attic rafters over the earlier section. The evidence suggests that the date of the house is that of its earliest paneling (about 1730) and that it was built on the unbalanced floor plan of an earlier house (built in the 1670's), the only remaining evidence of that structure being the re-used timbers in the cellar.

The principal interest here is in the quality and extent of Georgian paneling which remains. The molded fireplace detail is



Burnham-Patch House: Paneled fireplace wall

high style and retains more than the typical degree of sophistication seen on other paneled fireplace walls of similar period houses. In addition, the existence of heavy quarter-round chamfered framing in the cellar, even if re-used, is nonetheless of interest. Finally, the site of this building is strategic, as is that of the Heard-Lakeman dwelling.

Proceeding up Turkey Shore Road toward the Green Street Bridge, the tour passes, on the right, the Emerson-Howard House dated about 1695, owned by the Society for the Preservation of New England Antiquities. Notice the carved brackets under the hewn overhang between the first and second stories (photograph). This building is open to the public. Looking across the river, we see to the right the Preston-Foster House at 6 Water Street, painted in the traditional red.

The Preston-Foster House — 6 Water Street

The house has a typical original first-period floor plan, and later addition to the rear. The righthand half of this dwelling contains two massive quarter-round chamfered summer beams dating in

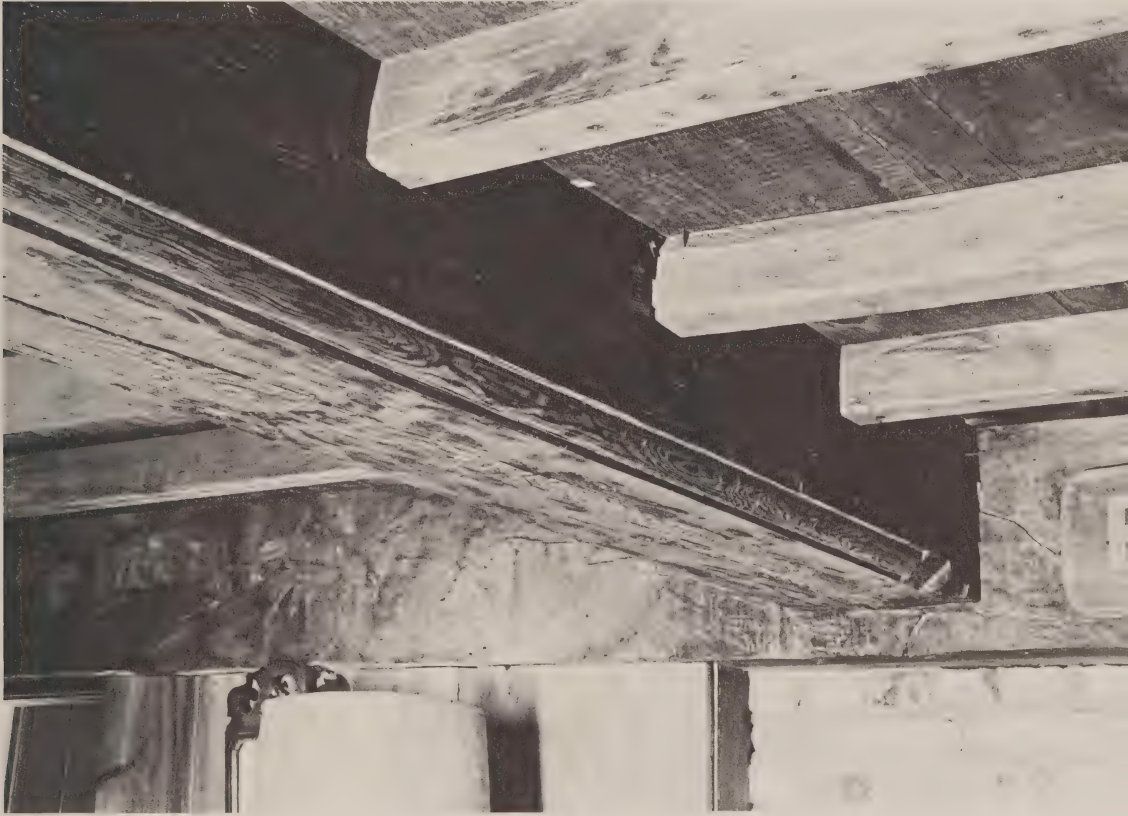
The Covenanted Houses

the last quarter of the seventeenth century (see photograph). If the timbers are original, the house dates to about 1690. Later small-beaded chamfering in the second-story framing would indicate a very late first-period style house of about 1730.

The exterior facade, with very sharp pitched roof and purlins that extend and are exposed beyond the gable end, is unusual and indicates a first-period date.

A principal important feature of this building lies in the variation of period material: heavy chamfered framing (as in the Burnham-Patch House), fine rich-hued unpainted horizontal feather-edged paneling in the first-floor right front room, and the superimposition of later 1800 Federal detail in the central hall area and upstairs fireplace walls.

Preston-Foster House: Summer beam





The Preston-Foster House



The Perkins-Hodgkins House

The Covenanted Houses

Moving down Water Street past Summer, our route passes the John Kendricks House at the corner of Hovey Street and Water, an exemplary seventeenth-century building not as yet under Agreement. Farther along, the street culminates in the town wharf, site of the landing of the first settlers. On East Street, as the road takes a left turn, stands a pitched-roof center-chimney house known as the Perkins-Hodgkins House.

The Perkins-Hodgkins House — 80 East Street

This building bears little resemblance to the original as it has been greatly changed inside and the chimney is gone. Moreover, the roof is of much later construction, as is all visible trim (see photograph). The cellar joists, however, have rectangular cross-section dimensions and are laid sideways instead of up and down, evidence of construction dating back to 1650.

Thomas Franklin Waters' history of Ipswich adds that "In 1668, the house of Jacob Perkins was burned (Jacob had inherited the house on the death of his father, John; Will allowed July, 1654). The maid servant was arrested on suspicion of incendiarism. She testified that she stood upon the oven on the back side of the house, and supported herself by holding to the thatch of the roof, while she looked to see if there were any hogs in the corn. Standing there, she knocked the ashes out of her pipe upon the thatch. . . . When she looked back from the cornfield, she saw smoke, and gave the alarm to Neighbour Abraham Perkins's wife. She came in haste, and looked into 'both the rooms of the house, and up into both the chimneys.' She also 'looked up into the chamber thro the boards that lay very open towards that side where the smoke was on the outside.' " The present owner is a direct descendent of the original John.

The building stands at the upper end of a row of period houses along the river and along East Street. It is important that these houses retain their setting along the river, against inevitable commercial pressure to expand or build at or near the increasingly active town wharf.

Turning in the opposite direction and proceeding along East Street, the tour approaches another notable building facing the landing site.



The Wainwright-Treadwell House — 62 East Street

Like the Burnham-Patch House, the Wainwright-Treadwell House, built about 1724, contains an intriguing yet elusive combination of features. There is raised-field paneling in the ceiling of the right front corner room and an abundance of feather sheathing and other raised-field paneling both upstairs and down (see photograph). The rear hall contains one of the finest of hand-turned balustrades. Dr. Cummings feels the original turner can be identified; the Capt. Richard Rogers House (discussed further along) of about the same period contains balusters of similar profile that may have been produced by the same craftsman. Evidence of early wallpaper and cloth wall coverings also was uncovered. A huge fireplace exists in the rear keeping room and re-used seventeenth-century framing in the cellar. This is not unusual, as there was likely an earlier house nearby close to the site of the original landing. The Wainwright-Treadwell House qualified for Agreement for both its location and the overwhelming amount and quality of molded interior trim.



Wainwright-Treadwell House: Raised-field paneling



Something to Preserve

The route now continues, following East Street parallel to the river, turning down County Street, and stopping at 7 County Street where property was owned by Thomas Dennis, a “joiner and carver in oak,” who worked in Ipswich in the seventeenth century.

The Dennis House — 7 County Street

The building is essentially of two periods. The front part facing County has the characteristic balanced Georgian floor plan and probably dates to about 1750. The frame in one room of this section is roughhewn, never the mark of a seventeenth-century house carpenter, who left his framing timbers smooth surfaced. The rear ell, with a heavy bevel chamfered summer beam and rare unpainted horizontal feather-edged sheathing, is the earlier part of this structure. Before the front four rooms were added, this rear ell would have been a typical one-room-over-one-room seventeenth-century half-house facing due south with an end chimney (see photograph).

This is how Thomas Dennis would have known it during his life.

The Dennis House



The Covenanted Houses

The significance of this building is inseparable from that of Dennis himself, a master carver.

The route passes the Dennis-Dodge House at the corner of Summer and County, a mid-eighteenth-century gambrel with preservation restrictions in its deed, inserted by the Ipswich Heritage Trust, for a time its owner. The central hall stairway is thought to be a Dennis work of art and will remain in the building as agreed in the covenant (see photograph).



Something to Preserve

One block away, at County and Green, an ancient salt-box built about 1666 and known as the Andrew Burley House appears on the left. Like the John Kendricks House, off Water Street, it is not under Agreement. Turning right, up Green, the tour reaches the North Green. A new Congregational Church rests on the Green and is the sixth such structure to command this locale. The cock weathervane from the 1749 church may be seen on the steeple, having topped three successive church edifices. Turning left, we confront an interesting brick Federal building formerly owned by the Independent Order of Odd Fellows. This building is one of the earliest remaining structures built for a public purpose — to house the Probate Court. Constructed in 1817 it is now under covenant to the Heritage Trust. Across the Green at 42 North Main Street is the Dr. John Manning House, built in the mid-eighteenth century and enlarged later to its present proportions. Next door is the clock shop, one of the earliest post office buildings still standing. Preservation restrictions have been inserted in the deeds to both houses by the Ipswich Heritage Trust. The tour route now leads by way of North Main to the corner with upper Summer Street.

The Benjamin Kimball House — 3 Summer Street

At the head of Summer Street at No. 3 is the Benjamin Kimball House, a two-story red clapboard dwelling with yellow trim, built about 1720 (see photograph).

At first glance, the front two rooms indicate a typical center chimney floor plan of the late eighteenth century, with an ell added later to the rear. But the stairway to the cellar under the front hall stairs reveals the end of a great wooden lintel beam that spans a hidden fireplace. This large fireplace in the left front room, first floor, stands behind a smaller fireplace now visible in this room. In addition, the vertical cornerposts in the front two rooms of the first floor were shouldered at first-floor ceiling level, indicating that at one time a roof began at this point; hence the building was formerly a story-and-a-half Cape instead of the present two-story house. Further evidence corroborating this judgment may be seen in the change in stair detail: a simple heavy first-quarter eighteenth-century hand rail ending at the first-floor ceiling is continued by a more delicate balustrade of the Federal period at the second-story level, probably when the house was raised.



The Benjamin Kimball House

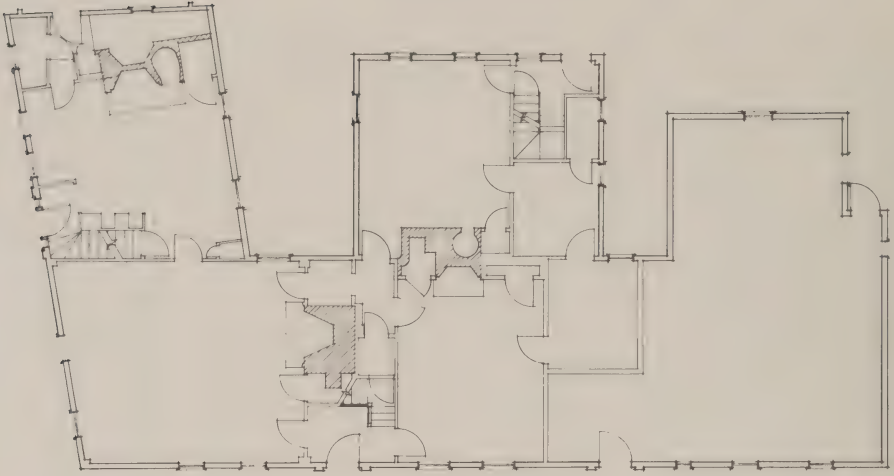
This is the only known early eighteenth-century Cape raised to a two-story level in Ipswich. In addition to the interesting features listed above, it includes unusual combined wood-and-metal door latches and two early eighteenth-century double paneled doors, probably from the early Cape and re-used in the ell (see photograph).

This house stands at the head of Summer Street, a quiet street sloping down to the river, as a whole the best preserved early “way” remaining in Ipswich.

The Day-Dodge House — 57 North Main Street

The Day-Dodge House is the last house on the right on the corner of North Main and East Streets. This is a structure literally built around a corner; the two ells, facing North Main and East Streets, follow the line of the streets, which meet each other at a slightly

Something to Preserve



Day-Dodge House: Floor plan

obtuse angle (see floor plan). Deed research confirms a building here as early as 1737. As in the Kimball House, the end of a large lintel can be seen in the chimney wall, which would indicate fire-place construction of that period or earlier. A boxed and covered frame appears in the interior and, if chamfered, would suggest an earlier date or a conservative housewright. This dwelling contains some of the finest molded detail on fireplace walls and in the central hall to be found in Ipswich (see pp. 36, 37, 40). The style is quite similar to detail in the Burnham-Patch House at 1 Turkey Shore Road. The unusual corner floor plan of the earlier section increases the value of this building, as does its site at the corner where three of the town's earliest streets converge.

A short distance within view down East Street stands the Matthew-Perkins House built in the early eighteenth century, and the Lakeman-Johnson House, about 1840, both owned by the Society for the Preservation of New England Antiquities. Turning and crossing North Main to the opposite corner, we approach the Capt. Richard Rogers House (ca. 1728).

The Capt. Richard Rogers House — 64 North Main Street

This is one of the most important houses in New England, due to the quality of molded detail in the first-floor left front room facing North Main (see photograph). Deed research has played a



The Day-Dodge House

The Capt. Richard Rogers House

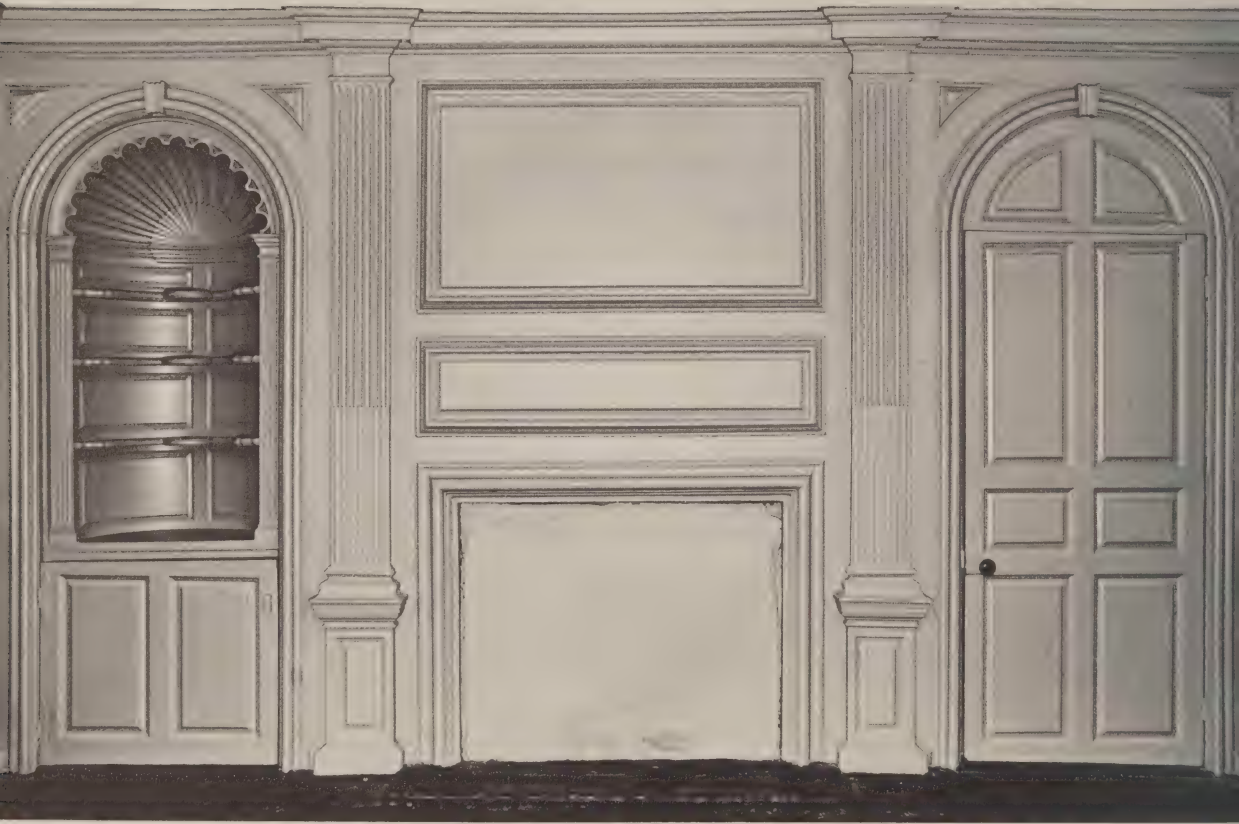


Something to Preserve

major role in dating this house as 1728. It may be one of the earliest buildings in Ipswich that includes such high-style Georgian detail. This type of floor plan, with the central hall passing from front to back of the front section and two chimneys to the rear on either side, persisted into the latter part of the eighteenth century. The front of the main central hall contains a closed stringcourse balustrade that could also date to 1728.

The importance of the location of this building is similar to the Day-Dodge building across the street. Any observer walking the route will be interested to note the corner angle of this house is acute and supplementary to the obtuse corner angle of the Day-Dodge House.

The major interest, of course, is in the great Georgian room with its exquisite high-style detail. The rear fireplace wall includes one of



The Covenanted Houses



the finest shell cupboards in New England, enframed in bolection molding, with fluted pilaster on either side. The shelves are scrolled and molded and raised panels form the rear of the cupboard inside the shelves. In looking at the wall, the eye travels over a dazzling display of classic Georgian detail from the molded mop board to the stopped fluted pilasters on either side of the fireplace, to the double molded cornice work at ceiling level. In addition, the other walls have bold forty-inch-wide raised-field panels with cyma-curve step-down molding along the edge of the panels, all encompassed by bolection molded trim (see photographs).



Something to Preserve

Turning up historic High Street, a continuation of East Street and the most important period way in Ipswich, our tour comes to 33 High, the rectory of the Ascension Memorial Church.

The John Gaines House — 3 High Street

Although a 1725 frame building possibly exists beneath clapboards and plaster, this is, for all intents and purposes, a house of the turn of the century, 1800 (see photograph). The confirmation of this date rests most emphatically on the McIntire-type Federal trim and detail found in the two front first-floor rooms.

The lefthand first-floor front room has an outstanding McIntire-type mantelpiece with ropework molding. The rest of the room reveals rosettes and reeded detail in the wainscoting, arched doorways with reeded trim, recessed paneled windows and dentil-molded cornices. The room across the hall has rosettes detail also in the cornicework (see pp. 40, 41). The exterior rear wall has a fine molded arched window. The roof is uniquely covered by two differing but complete roof constructions, the pitched roof in front, the hipped roof to the rear — a curious formation that gives evidence of a Federalized house of considerably earlier date.

The building is particularly important because Federal houses are rare in Ipswich. Moreover, the existing trim ranks with the best in New England.

The Philip Call House — 26 High Street

Down High on the left is Number 26, the Philip Call House, built about 1659 (see photograph). Ordinarily, seventeenth-century houses face due south to increase the heat from the low winter sun. However, this dwelling faces north along High, which indicates how early the street is.

The original section at first glance reveals a typical one-over-one room first-period dwelling with later additions to the rear and east side. However, an unusually placed cross girt receives the main summer beam at its west end, and there is reason to believe that the area beyond this girt once housed two small rooms indicating a three-room floor plan of very early English derivation. The heavy



The John Gaines House



The Philip Call House

Something to Preserve

quarter-round chamfered frame is further confirmation of the seventeenth-century date (see page 33).

The dwelling is interesting for its multiplicity of detail and trim. First, there is a two-story seventeenth-century chamfered frame intact. The upstairs bedroom reveals very early raised paneling on the fireplace wall, balanced by two fine early raised paneled doors on the opposite wall, hung on ornate rose-headed H hinges. There is also late nineteenth-century Victorian trim, its date echoed by a statement etched in a rear windowpane overlooking a boxwood garden: "Abbie S. Smith, Oct 9 1870 IP. Fem. Sem. Class. '69." Finally, a rare example of early wallpaper with the very unusual evidence of a maker's mark was also found in the house.

The Waldo-Caldwell House — 33 High Street

The Waldo-Caldwell House, 33 High Street, was restored to its present condition about fifteen years ago (see photograph). The building looks much as it did over 250 years ago (except for the absence of diamond-paned windows). Its huge walk-in fireplace, massive summer beams and wall sheathing are also unchanged.

The Waldo-Caldwell House





The heavy chamfered frame, unlike the Philip Call House, is conspicuously exposed throughout. A unique attic stairway held in place by handwrought rose-headed nails still exists (see photograph). This kind of informal, almost folk-art, feature gives the great flavor of individuality to New England's earliest houses; each is indeed "one of a kind." On this site, from 1635 to 1644, lived Simon Bradstreet, later Governor of Massachusetts, and his young wife Anne, who wrote many of her poems here.

Continuing down High Street our route passes an ancient cemetery where many of the earliest settlers are buried, including the wife of John Winthrop, Jr.



The John Kimball House — 104 High Street

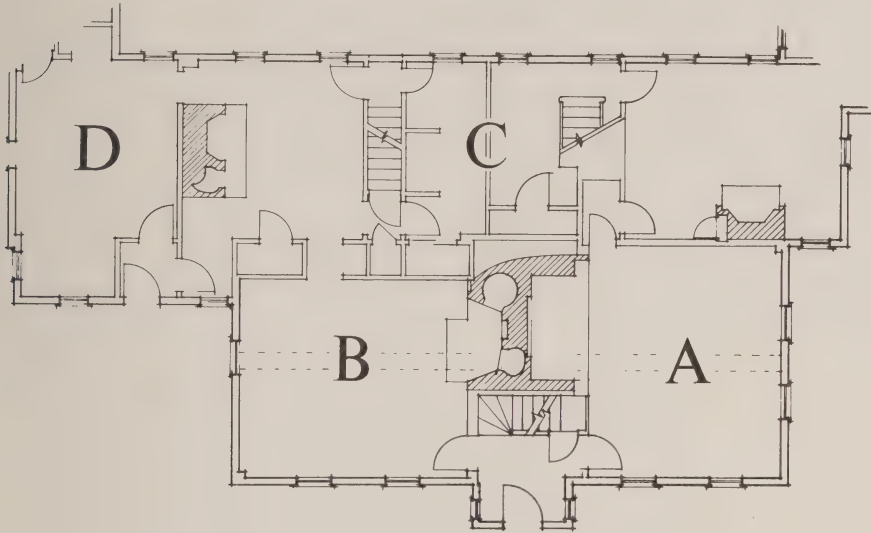
The John Kimball House on the left at 104 High Street is one of “twin” houses, resembling the orange-shuttered house next door. Its location, along with that of the Merchant-Choate House, is critical in its position at the northern gateway to High Street (see photograph).

The house possesses an interesting twelve-inch overhang along the front cornice at the roofline and an early molded gutter. The original house, two-over-two, has a basic central-chimney floor plan. The entry hall is dominated by a first-period turned stairway stained in a splendid old tobacco-brown color. The keeping room on the left has a great chamfered summer beam which carries the overhead ceiling joists, while the walls are covered with vertical wide-boarded tongue-and-groove sheathing, all in the same deep hue. The room on the right of the hall is Federal, with white-painted delicate trim, and the bedrooms contain some fine eighteenth-century paneling. Thus, three major architectural eras are represented in this one admirable house.

The Covenanted Houses

The Merchant-Choate House — 97-99 High Street

Farther down High at 97-99 stands the Merchant-Choate House, which contains the framing of a story-and-one-half English-type cottage that dates to the mid-seventeenth century (see photograph). Only a bare handful of these story-and-one-half cottages remain in New England today. The dwelling is unquestionably first-period, with great walk-in fireplaces in the first-floor rooms.



Merchant-Choate House: First floor plan (central section)

An unbalanced floor plan, which probably began as one-over-one (see B), expanded to two-over-two (see A) and was later added to the rear and side (see C & D). The north wall of Room A contains brick nogging (soft bricks laid up in clay), indicating that it was an exterior weather wall at one time (see photograph). Much of the interior frame is boxed over or hidden but the exposed material in the attic gives further credence to the story-and-one-half cottage estimate.

In the attic, the chimney reveals a much lower roofline, i.e., the lower-level roof over only one and one-half stories instead of two full stories. In addition, mortise joints in the rafters, which receive collar ties in the west attic section, are low down — in the expected position for a story-and-a-half attic (see photograph on page 48).

Something to Preserve

The unusual significance of this building lies in the evidence for this rare and early type of construction. The building is a classic example of the need to preserve the central frame. The analysis of every visible joint is important. The great fireplaces (one with evidence of early lintel repair, as such lintels often burned out) and the original brick nogging further add to the importance of this building.

Merchant-Choate House: Brick nogging





The Merchant-Choate House

Those are the sixteen houses in Ipswich now protected by Preservation Agreements. Of the twenty-two buildings which were evaluated by the Project as being of first priority, only three now remain unprotected. As this report was being prepared, two of the first twenty-two came on the market; it was indeed fortunate that the Ipswich Heritage Trust was able, through purchase and resale Agreements, to safeguard these buildings for the future. They are:

The I.O.O.F. Hall, North Main Street (Nathaniel Pulsifer), one of only four pre-Civil War brick buildings left in Ipswich. Its history as the early seat of the Essex Probate Court and the meeting place of the Independent Order of Odd Fellows makes it a principal part of Meetinghouse Green.

The South Congregational Church, South Village Green (Friends of Ipswich Youth), built in 1838 and long associated with the history

Something to Preserve

of Ipswich, is now protected for compatible use as the Ipswich Youth Center.

The Commission was informed that the owners of the Paine House (estate of R. G. Dodge), Jeffrey's Neck Road, would be unable to sign a Preservation Agreement because the family was arranging to protect the house in other satisfactory ways. This first-period classic is an integral lean-to saltbox, practically original throughout.

The owners of the three other first-priority houses declined to sign for various reasons, but the houses are noteworthy.

The Andrew Burley House (Ross-Benedix), 10 Green Street, is a first-quality house, unmistakably pre-1700, although much is now covered with a fine Georgian overlay.

The John Kendricks House (Webster Stone), 3 Hovey Street, ranks with the Whipple, Paine, and Merchant-Choate Houses as the finest in seventeenth-century architecture.

The Aaron Smith House (Richard Gaudet), South Village Green, is a good second-period house located on the South Village Green close to the Whipple House.

*Opposite:
Two houses owned by
The Society for the Preservation
of New England Antiquities*



The Emerson-Howard House



The Matthew Perkins House

IO

Reflections...

THE interest in historic preservation has increased with the physical and technological expansion of the last century. At the same time our modern dependence on innumerable interlocking specialized trades and technologies emphasized our need to retain an understanding of more self-sufficient times.

Washington's Georgetown, Boston's Beacon Hill, or Charleston below Broad Street are areas which for up to a century and more have changed little in appearance while having greatly increased in value. In fact, there have always been limitations to ownership. In 1634 you might not build on your property if it was more than a half-mile from the meeting house; today you may not build too close to your neighbor. Zoning laws and other municipal restrictions have proved not hardships but privileges. A Preservation Agreement is the evidence of a yet greater value.

Few of us buy our homes for purposes of land speculation. Most of us want steadily increasing value over an extended period in surroundings which change little and only for the better among neighbors who become and who remain friends. Neighborhoods of historic significance are likely to be well-endowed with such qualities. When they are protected by the sympathetic understanding of owners and residents, these neighborhoods become properties of sure value and heirlooms to be cherished.

It is the task of the Commission to foster the respect and affection that their fellow townsmen already hold for their neighbors of neighboring generations. The image of ancestral centuries still lives vividly in ancient dwellings everywhere. For the many lives they have sheltered, these buildings need to be faithfully preserved.

II

and Conclusions

THE outcome of the Ipswich demonstration Project was a happy one. Sixteen early homes of prime quality, many of them commanding conspicuous sites in the center of town, have been secured to the future by means of less-than-fee Agreements. Out of twenty-two owners approached, sixteen signed. Most owners welcomed the Agreements as a recognition of their homes' value.

Of the sixteen signers, eight accepted the thousand-dollar Agreement fee. In cases where owners, for whatever reason, were determined not to sign, the fee did not alter their predisposition; but it did provide incentive to the hesitant and lent reality and seriousness to the transaction. Additionally, the payment of the fee offered the supervisory authority opportunity to make concrete suggestions and to prompt necessary expenditures for preservation.

The evolution of a short and flexible legal form, as detailed in Chapter Six, was essential. Owners liked the variable inclusion of features and in some instances wished to add more. Specifying the most important historic features and *not* seeking to control surface treatment, especially painting, while making generous allowance for livability, greatly increased acceptance of the Agreement.

With these sixteen Agreements a basis has been laid for the continuing and expanding preservation of one town's priceless architectural heritage.

The inventory was a useful exercise that should simplify all future efforts along the lines of this Project. Much material never before known or documented in Ipswich has been made a matter of record. Of the one hundred and seventy buildings examined, twenty-two seemed of first importance, and of those a majority have been committed to preservation. Accident is no longer the chief preserver of old homes in Ipswich.

Glossary

Baluster	an intermediate, short vertical member or post, sometimes turned, supporting the handrail in a balustrade of a stair
Balustrade	an assembly, usually a part of a stair, consisting of the handrail, balusters, base and newel posts
Banister	a baluster
Baseboard	(sometimes called skirting board) — a horizontal board at the base of a wall
Bolection molding	a wooden piece of trim used to cover or decorate the joint between two members with different surface levels, often found around fireplaces and paneling
Brace	a diagonal timber, often running from corner-post to plate, girt or sill, used to brace the structural frame against horizontal stresses
Chair rail	wooden molded trim attached to a wall to protect its surface against damage
Chamfer	the surface resulting when the 90° corner of a beam or column is cut away at 45° in a flat, smooth line
Bevel chamfer	the surface resulting when the 90° corner of a beam or column is cut away on a flat, smooth line
Quarter-round chamfer	the surface resulting when the 90° corner of a beam or column is cut away in a quarter-round convex shape
Chamfer stop	a method of ending a chamfer or bevel chamfer by returning it to the normal 90° corner of a timber

Glossary

Closed-string course	a sloping board at the ends of treads and risers of a stair upon which the balusters rest, as opposed to resting on the treads, and therefore enclosing the treads and risers
Cornerpost	a vertical wood timber at corners of structures
Cornice molding	wooden trim covering joint between interior wall and ceiling or between exterior wall and roof assembly
Cyma-curve molding	wooden trim or combination of wooden pieces, the profile of which resembles either an S or an inverted S shape
Dentil molding	a form of trim consisting of a series of small square or rectangular blocks of wood spaced apart to form a toothlike pattern, usually at cornice height
Feather-edged sheathing	wood panels with edges beveled, to fit into the groove of the next panel
Fluted pilaster	a shallow, columnlike projection from a wall, having vertical grooves, usually semicircular or elliptical in cross section (flutes usually are ended before reaching top or bottom of pilaster, allowing it to return to a rectangular shape; called stop-fluted)
Girt	principal horizontal timber running from front to back of house
Lintel	large horizontal timber over a fireplace opening which supports the wall above; also a timber above a door or window which performs the same function
Newel post	a post, sometimes turned, in a balustrade, at the ends and corners of a flight of stairs, which carries, along with the balusters, the handrail
Nogging	brickwork infilling between wooden frame members

Something to Preserve

Plate	a horizontal timber at the top of a wall frame which receives floor beams or roof rafters
Purlin	a horizontal structural member supporting the roof which runs parallel to the plate and the ridge
Common purlin	a small dimensioned purlin
Principal purlin	a large dimensioned purlin, usually joining principal rafters
Rafter	a sloping timber extending from plate to ridge
Common rafter	a small dimensioned rafter, carried by purlins which in turn are carried by the principal rafters
Principal rafter	a large dimensioned rafter spanning from plate to ridge
Raised-field paneling	(also known as raised block paneling) — paneling which is thicker at the center than at the edges and which is joined to outer frame by a tongue and groove joint
Reeded detail	(also known as reeding or reed molding) — narrow, parallel, convex or half-round lengths of trim set closely together
Ridge pole	(also known as ridge) — horizontal timber at apex of roof construction where rafters meet
Ropework molding	wooden trim which gives the appearance of a rope
Rose-headed H hinge	an H hinge, the bottom and top of which have a roselike profile
Rose-headed nail	handmade nail with large head
Rosette	small, flat, circular or oval ornament usually decorated with petallike concentric patterns
Sill	horizontal timber at the bottom of a frame wall and just above the foundation

Glossary

Stud	secondary vertical timbers in a frame wall extending from sill to plate
Summer beam	a large horizontal timber usually more or less centered in a room and which may extend between girts parallel to front or end of house
Tongue-and-groove	a joint between the edges of boards in which the “tongue” of one board is fitted into the “groove” of the other
Turned	a piece of wood, such as a baluster, the shape of which is produced by turning it on a lathe
Wainscoting	(also known as wainscot) — board trim at bottom part of interior walls, usually about thirty inches high

Appendix A

THE HOMEOWNER'S COMMON-SENSE GUIDE TO PRESERVATION

MANY of America's oldest houses were beautifully and carefully built and in consequence have lasted a long time. But no house, and particularly no wooden house, can last forever. Our historic dwellings deserve our painstaking care, and the first and most important care taken must inevitably be by the owner. Behind him stands the Historic Commission to help with advice and inspection. Beyond that, in Ipswich, there are at present a few private funds which in an emergency may be applied to. Among them is the Ipswich Heritage Trust, already mentioned in these pages.

What a homeowner may do to serve his interest as guardian of his dwelling is set forth in the following set of simple rules:

- I. Seek professional advice (before committing cash) from:
 - A. Qualified architects
 - B. Architectural historians
 - C. Local and state Antiquarian or Historical Societies and Commissions
 - D. Qualified contractors, builders, or carpenters. (They should have previous experience in this kind of work)
- II. Set priorities (before committing cash and after consulting professionals). Consider:
 - A. Safety from the dangers of
 1. fire — i.e., wiring, heating plant, lightning, general kitchen layout (stove, etc.). Inspectors from estab-

Something to Preserve

lished building trades are usually qualified to make this kind of inspection. A planned installation of extinguishers and a fire alarm system might be considered. The local fire department will probably be glad to offer suggestions.

2. structural deficiency — this is seldom an immediate problem due to the large cross-section dimensions of early timbers. However, attic rafters have been known to break under the weight of snow. Remember that very often shoring up structural breaks with a new timber or a lally column will provide a satisfactory temporary solution at low cost until the best repair method can be financed.

B. Protection from

1. insects — the cost of an inspection is reasonable (usually about \$15), but over 80 per cent of the surveyed Ipswich houses had had no inspection within three years.

2. moisture

a) Primary checklist

- (1) Roof — tight?
- (2) Flashing
- (3) Windows and doors and their frames
- (4) Wall cover
- (5) Drainage system around house — do gutters drain into cellar or do they drain properly away from house? If the former is the case, a diversion trench should be dug with piping or some other method devised to carry water away from house.

b) Secondary checklist

- (1) Is the cellar dry? Any streams in cellar floor should be channeled through and out, following the downward land contour.
- (2) Are there proper methods of ventilation (crossdraft)?
- (3) Are cellar walls tight on outside and around windows to prevent collection of moisture?

Appendix A

- (4) Is the building enshrouded in moisture-holding foliage, which makes paint peel?
- (5) Do water crystals appear in the attic in winter?
- (6) Is the house near a lake or pond?
- (7) Consider synthetic dehumidification as a remedy.

III. How to proceed with contractors if an architect or other qualified consultants are not to be used:

- A. Contractors should give written estimates. Consult two or three if the job is major. If the problem is hidden in the walls, consider merely estimating the cost of opening up the wall and replacing it if the structural repair is too costly for the current pocketbook. Try to avoid blind estimates which may be later escalated.
- B. Methods and techniques of introducing new practical equipment, kitchens, baths, heating plants. Practical facilities should go in nonperiod additions wherever possible. A general rule is to damage or alter original material as little as possible.
- C. Restoration: Repainting or restoring of original woodwork should carry low priority compared to the other problems above. Change as little as possible; leave original paint layers (match and paint over) when this is feasible. A typical mistake made by overzealous restorationists is ripping down original plaster ceilings to expose beams never meant to be exposed. Proper dating of the house (was it built before 1700?) and/or careful exploration of a small area in the ceiling to ascertain if telltale whitewash and smoke stains exist on uncovered ceiling board should prevent this error. A common dilemma arises when a house owner wants to open up a first period great fireplace hidden behind later paneling. If the wall of paneling must be removed, it should be kept intact and with the house. Before the fireplace is opened up, the great lintel should be carefully examined to make sure it is intact; it may be burned or cut through. Consult a professional brick mason prior to beginning this potentially dangerous task.

Appendix B

THE MASSACHUSETTS STATUTES PROVIDING FOR THE ESTABLISHMENT OF HISTORICAL COMMISSIONS

General Laws, Chapter 40, Section 8D

Historical Commissions; Establishment, Powers and Duties (Acts of 1963, Chapter 694, s.4 as amended by Acts of 1971, Chapter 517, s.3 and Acts of 1973, Chapter 1155, s.7)

(Historic District Commissions established under General Laws, Chapter 40C may, pursuant to s.14 of that Chapter, be granted the powers and duties of an historical commission under Chapter 40, Section 8D as well and be entitled an historical commission.)

§8D. Historical Commissions; Establishment, Powers and Duties.

A city or town which accepts this section may establish an historical commission, hereinafter called the commission, for the preservation, protection and development of the historical or archeological assets of such city or town. Such commission shall conduct researches for places of historic or archeological value, shall cooperate with the state archeologist in conducting such researches or other surveys, and shall seek to coordinate the activities of unofficial bodies organized for similar purposes, and may advertise, prepare, print and distribute books, maps, charts, plans and pamphlets which it deems necessary for its work. For the purpose of protecting and preserving such places, it may make such recommendations as it deems necessary to the city council or the selectmen and, subject to the approval of the city council or the selectmen, to the Massachusetts historical commission, that any such place be certified as an historical or archeological landmark. It shall report to the state archeologist the existence of any archeological, paleontological or historical site or object discovered in accordance with section twenty-seven C of chapter nine, and shall apply for permits

Appendix B

necessary pursuant to said section twenty-seven C. The commission may hold hearings, may enter into contracts with individuals, organizations and institutions for services furthering the objectives of the commission's program; may enter into contracts with local or regional associations for cooperative endeavors furthering the commission's program; may accept gifts, contributions and bequests of funds from individuals, foundations and from federal, state or other governmental bodies for the purpose of furthering the commission's program; may make and sign any agreements and may do and perform any and all acts which may be necessary or desirable to carry out the purposes of this section. It shall keep accurate records of its meetings and actions and shall file an annual report which shall be printed in the case of towns in the annual town report. The commission may appoint such clerks and other employees as it may from time to time require. The commission shall consist of not less than three nor more than seven members. In cities the members shall be appointed by the mayor, subject to the provisions of the city charter, except that in cities having a city manager form of government, said appointments shall be by the city manager, subject to the provisions of the charter; and in towns they shall be appointed by the selectmen, excepting towns having a town manager form of government, in which towns appointments shall be made by the town manager, subject to the approval of the selectmen. When a commission is first established, the terms of the members shall be for one, two or three years, and so arranged that the terms of approximately one third of the members will expire each year, and their successors shall be appointed for terms of three years each. Any member of a commission so appointed may, after a public hearing if requested, be removed for cause by the appointing authority. A vacancy occurring otherwise than by expiration of a term shall in a city be filled for the unexpired term in the same manner as an original appointment, and in a town in the manner provided in section eleven of chapter forty-one. Said commission may acquire in the name of the city or town by gift, purchase, grant, bequest, devise, lease or otherwise the fee or lesser interest in real or personal property of significant historical value and may manage the same.

Appendix C

THE MASSACHUSETTS CONSERVATION AND PRESERVATION RESTRICTIONS ACT OF 1969

Chap. 666. AN ACT PROTECTING CONSERVATION AND PRESERVATION RESTRICTIONS HELD OR APPROVED BY APPROPRIATE PUBLIC AUTHORITY, PROVIDING FOR PUBLIC RESTRICTION TRACT INDEXES AT REGISTRIES OF DEEDS AND CLARIFYING CERTAIN STATUTORY PROVISIONS RELATING TO RESTRICTIONS.

Be it enacted, etc., as follows:

SECTION 1. Section 23 of chapter 184 of the General Laws, as appearing in the Tercentenary Edition, is hereby amended by striking out the second sentence and inserting in place thereof the following sentence: — This section shall not apply to conditions or restrictions existing on July sixteenth, eighteen hundred and eighty-seven, to those contained in a deed, grant or gift of the commonwealth, or to those having the benefit of section thirty-two.

SECTION 2. Section 26 of said chapter 184, as appearing in section 1 of chapter 448 of the acts of 1961, is hereby amended by striking out the first paragraph and inserting in place thereof the following paragraph: —

All restrictions on the use of land or construction thereon which run with the land subject thereto and are imposed by covenant, agreement, or otherwise, whether or not stated in the form of a condition, in any deed, will or other instrument executed by or on behalf of the owner of the land or in any order of taking shall be subject to this section and sections twenty-seven through thirty, except (a) restrictions in leases, mortgages and other security instruments, (b) restrictions in orders of taking by the commonwealth or a political subdivision or public instrumentality thereof

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made before January first, nineteen hundred and seventy and (c) conservation and preservation restrictions, as defined in section thirty-one which have the benefit of section thirty-two, and other restrictions held by any governmental body, if the instrument imposing such conservation, preservation or other restriction is duly recorded and indexed in the grantor index in the registry of deeds or registered in the registry district of the land court for the county or district where the land lies so as to affect its title, and describes the land by metes and bounds or by reference to a recorded or registered plan showing its boundaries, and if affecting land not registered is also indexed in a public restriction tract index maintained pursuant to section thirty-three, or, if not so indexed, there has been no failure to file a notice of restriction as therein provided. "Governmental body", as referred to in this section and sections thirty-two and thirty-three, means the United States or the commonwealth, acting through any of its departments, divisions, commissions, boards or agencies, or any political subdivision or public instrumentality thereof or any public authority.

SECTION 3. The second paragraph of said section 26 of said chapter 184, as so appearing, is hereby amended by striking out line 1 and inserting in place thereof the following line: — For the purposes of this section and sections twenty-seven to thirty, inclusive: —.

SECTION 4. Section 27 of said chapter 184, as so appearing, is hereby amended by inserting after the word "benefit", in line 4, the following words: — or is entitled to such benefit as a successor to such party.

SECTION 5. Said chapter 184 is hereby further amended by adding the following three sections: —

Section 31. A conservation restriction means a right, whether or not stated in the form of a restriction, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of the land or in any order of taking, appropriate to retaining land or water areas predominantly in their natural, scenic or open condition or in agricultural, farming or forest use, to forbid or limit any or all (a) construction or placing of buildings, roads, signs, billboards or other advertising, utilities or other structures on or above the ground, (b) dumping or placing of soil or other substance or material as landfill, or dumping or

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placing of trash, waste or unsightly or offensive materials, (c) removal or destruction of trees, shrubs or other vegetation, (d) excavation, dredging or removal of loam, peat, gravel, soil, rock or other mineral substance in such manner as to affect the surface, (e) surface use except for agricultural, farming, forest or outdoor recreational purposes or purposes permitting the land or water area to remain predominantly in its natural condition, (f) activities detrimental to drainage, flood control, water conservation, erosion control or soil conservation, or (g) other acts or uses detrimental to such retention of land or water areas.

A preservation restriction means a right, whether or not stated in the form of a restriction, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of the land or in any order of taking, appropriate to preservation of a structure or site historically significant for its architecture, archeology or associations, to forbid or limit any or all (a) alterations in exterior or interior features of the structure, (b) changes in appearance or condition of the site, (c) uses not historically appropriate, or (d) other acts or uses detrimental to appropriate preservation of the structure or site.

Section 32. No. conservation restriction, as defined in section thirty-one, held by any governmental body or by a charitable corporation or trust whose purposes include conservation of land or water areas or of a particular such area, and no preservation restriction, as defined in section thirty-one, held by any governmental body or by a charitable corporation or trust whose purposes include preservation of buildings or sites of historical significance or of a particular such building or site, shall be unenforceable on account of lack of privity of estate or contract or lack of benefit to particular land or on account of the benefit being assignable or being assigned to any other governmental body or to any charitable corporation or trust with like purposes, provided (a) in case of a restriction held by a city or town or a commission, authority, or other instrumentality thereof it is approved by the commissioner of natural resources if a conservation restriction or the Massachusetts historical commission if a preservation restriction, and (b) in case of a restriction held by a charitable corporation or trust it is approved by the mayor, or in cities having a city manager the city manager, and city council of the city, or the selectmen or town meeting of the town, in which the land is situated, and by the com-

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missioner of natural resources if a conservation restriction or the Massachusetts historical commission if a preservation restriction.

Such conservation and preservation restrictions are interests in land and may be acquired by any governmental body or such charitable corporation or trust which has power to acquire interest in land, in the same manner as it may acquire other interests in land. Such a restriction may be enforced by injunction or proceeding in equity, and shall entitle representatives of the holder of it to enter the land in a reasonable manner and at reasonable times to assure compliance. Such a restriction may be released, in whole or in part, by the holder for such consideration, if any, as the holder may determine, in the same manner as the holder may dispose of land or other interests in land, but only after a public hearing upon reasonable public notice, by the governmental body holding the restriction or if held by a charitable corporation or trust, by the mayor, or in cities having a city manager the city manager, and city council of the city or the selectmen of the town, whose approval shall be required, in case of a restriction requiring approval by the commissioner of natural resources or the Massachusetts historical commission, only with like approval of the release.

Approvals of restrictions and releases shall be evidenced by certificates of the commissioner of natural resources or the chairman, clerk or secretary of the commission, city council, selectmen or town, duly recorded or registered.

In determining whether the restriction or its continuance is in the public interest, the governmental body acquiring, releasing or approving shall take into consideration the public interest in such conservation or preservation, and any national, state, regional and local program in furtherance thereof, and also any public, state, regional or local comprehensive land use or development plan affecting the land, and any known proposal by a governmental body for use of the land.

This section shall not be construed to imply that any restriction, easement, covenant or condition which does not have the benefit of this section shall, on account of any provision hereof, be unenforceable. Nothing in this section or sections thirty-one and thirty-three shall diminish the powers granted by any general or special law to acquire by purchase, gift, eminent domain or otherwise and to use land for public purposes.

Section 33. Any city or town may file with the register of deeds for

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the county or district in which it is situated a map or set of maps of the city or town, to be known as the public restriction tract index, on which may be indexed conservation and preservation restrictions and restrictions held by any governmental body. Such indexing shall indicate sufficiently for identification (a) the land subject to the restriction, (b) the name of the holder of the restriction, and (c) the place of record in the public records of the instrument imposing the restriction. Maps used by assessors to identify parcels taxed, and approximate boundaries without distances, shall be sufficient, and, where maps by parcels are not available, addition to other maps of approximate boundaries of restricted land shall be sufficient. If the names of the holders and the instrument references cannot be conveniently shown directly on the maps, they may be indicated by appropriate reference to accompanying lists. Such maps may also indicate similarly, so far as practicable, (a) any order or license issued by a governmental body entitled to be recorded or registered, (b) the approximate boundaries of any historic or architectural control district established under chapter forty C or any special act, ordinance or by-law where a certificate of appropriateness may be required for exterior changes, (c) any landmark certified by the Massachusetts historical commission pursuant to section twenty-seven of chapter nine, (d) any other land which any governmental body may own in fee, or in which it may hold any other interest, and (e) such additional data as the filing governmental body may deem appropriate.

Whenever any instrument of acquisition of a restriction or order or other appropriate evidence entitled to be indexed in a public restriction tract index is submitted for such indexing, the register shall make, or require the holder of the right to enforce the restriction or order or interest to make, appropriate additions to the tract index, and such addition shall, as to any restriction or order or other appropriate evidence previously recorded entitled to be indexed, be likewise made on request of the holder of the right to enforce it.

The maps shall be in such form that they can be readily added to, changed and reproduced, and shall be a public record, appropriately available for public inspection. If any governmental body, other than a city or town in which the land affected lies, holds a right to enforce a restriction or order or an interest entitled to be indexed in a public restriction tract index for any city or town which has not filed

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such an index, or if the commissioner of natural resources or the Massachusetts historical commission approves a conservation or preservation restriction held by a charitable corporation or trust so entitled, and the city or town does not within one year after written request to the mayor or selectmen file a sufficient map or set of maps for the purpose, the holding governmental body or approving commissioner or commission may do so.

The registers of deeds, or a majority of them, may, from time to time with the approval of the attorney general, make and amend rules and regulations for administration of public restriction tract indexes, and the provisions of section thirteen A of chapter thirty-six shall not apply thereto. New tract indexes may be filed, from time to time, upon compliance with such rules and regulations as may be necessary to assure against omission of prior additions and references still effective.

Except in the case of a restriction noted on the certificate of title of registered land subject thereto, no conservation or preservation restriction having the benefit of section thirty-two, and no other restriction held by any governmental body, which is not so indexed in the public restriction tract index shall be enforceable after thirty years from the recording of the instrument imposing it unless before the expiration of such thirty years there is similarly recorded a notice of restriction identifying the instrument and its place of record in the public records and naming one or more of the owners of record of each parcel of land to be affected by the notice, nor enforceable after twenty years from the recording of any such notice unless before the expiration of twenty years another such notice is so recorded, and in each case the notice is indexed in the grantor index under the owner or owners named. Such notices may be given by any official of a governmental body holding the restriction, by the commissioner of natural resources in case of a restriction approved by him, by the chairman or acting chairman of the Massachusetts historical commission in case of a restriction approved by it, or by any official of any charitable corporation or trust holding the restriction or whose purposes include, in case of a conservation restriction, the conservation of land or water areas, or, in case of a preservation restriction, the preservation of buildings or sites of historical significance.

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SECTION 6. Sections thirty-one, thirty-two and thirty-three of chapter one hundred and eighty-four of the General Laws, inserted by section five of this act, shall apply to conservation and preservation restrictions not otherwise unenforceable contained in instruments executed or probated before the effective date of this act, as well as to those contained in instruments executed or probated thereafter. The time for filing a notice of restriction with respect to any restriction existing on said effective date and not theretofore required to be filed shall not expire sooner than one year after said effective date.

Approved August 11, 1969.

Appendix D

ZONING — ORDINANCES AND BY-LAWS — PUBLICATION

CHAPTER 602.

An Act authorizing cities and towns to publish compilations of zoning ordinances and by-laws and supplements thereto.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 40 of the General Laws is hereby amended by inserting after section 32A, as appearing in the Tercentenary Edition, the following section: Section 32B.

A city or town may from time to time publish, distribute or sell compilations of zoning ordinances or by-laws and amendments thereto, certified by the city or town clerk, and effective as of a specified date. The compilations and supplements thereto may include zoning maps and subdivision control, public health, safety and other land use control and environmental quality laws, ordinances, by-laws, regulations, rules, and orders, notices of hearings on proposed and pending amendments which, if adopted, would affect construction begun after the notice of hearing, and claims of invalidity of ordinances or by-laws filed with the clerk, all in such manner as to permit public officials, owners, purchasers, mortgagees of property and others to ascertain the zoning pending or applicable to property at any time.

Zoning maps may, in addition to showing boundaries, also identify historic or architectural districts for which special certificates or permits may be required, certified historical landmarks or places, land publicly owned, designated as wetlands or subject to wetlands regulations, land subject to conservation or preservation restrictions under chapter one hundred and eighty-four, and other land use or environmental quality control information.

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The city or town clerk may arrange for the distribution of such compilations and supplements thereto to city, town, county, regional and state public offices, and for the public sale of such compilations and supplements thereto at appropriate places, at a price not to exceed the estimated cost of preparation, publication, distribution and sale. The commissioner of community affairs and registers of deeds may assist the clerk in such distribution. The commissioner may suggest guidelines for such compilations and supplements thereto, procedures for verifying the text of zoning enactments and the accuracy of zoning maps, require a copy of each zoning compilation, supplement and map, and may also assist in the preparation, publication, distribution and sale of such compilations and supplements thereto.

SECTION 2. The first sentence of the fifth paragraph of section 33 of chapter 184, as appearing in section 5 of chapter 666 of the acts of 1969, is hereby amended by inserting after the word "thereto", in line 2, the words: —, or where the general location of the restricted land is indicated on a zoning map published by a city or town with a reference to a marginal note or list indicating the original or then holder of the restriction and the place of record in the public records of the instrument imposing the restriction.

SECTION 3. The provisions of section thirty-three of chapter one hundred and eighty-four of the General Laws, amended by section two of this act, shall apply only to compilations and supplements thereto prepared after the effective date of this act.

Approved August 9, 1973.

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RELEVANT STATUTES IN OTHER NEW ENGLAND STATES

Connecticut General Statutes, Annotated

§ 47-42a LAND AND LAND TITLES

§ 47-42a. Definitions

For the purposes of sections 47-42b and 47-42c, the following definitions shall apply:

(a) “Conservation restriction” means a limitation, whether or not stated in the form of a restriction, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of the land described therein or in any order of taking such land whose purpose is to retain land or water areas predominantly in their natural, scenic or open condition or in agricultural, farming, forest or open space use.

(b) “Preservation restriction” means a limitation, whether or not stated in the form of a restriction, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of land or in any order of taking of such land whose purpose is to preserve historically significant structures or sites.

(1971, P.A. 173, § 1.)

§ 47-42b. Enforcement of conservation and preservation restrictions held by governmental body or charitable corporation

No conservation restriction held by any governmental body or by a charitable corporation or trust whose purposes include conservation of land or water areas and no preservation restriction held by any governmental body or by a charitable corporation or

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trust whose purposes include preservation of buildings or sites of historical significance shall be unenforceable on account of lack of privity of estate or contract or lack of benefit to particular land or on account of the benefit being assignable or being assigned to any other governmental body or to any charitable corporation or trust with like purposes.

(1971, P.A. 173, § 2.)

§ 47-42c. Acquisition of restrictions

Such conservation and preservation restrictions are interests in land and may be acquired by any governmental body or any charitable corporation or trust which has the power to acquire interests in land in the same manner as it may acquire other interests in land. Such restrictions may be enforced by injunction or proceedings in equity.

(1971, P.A. 173, § 3.)

New Hampshire Revised Statutes, Annotated

CHAPTER 391.

AN ACT CONCERNING CONSERVATION AND PRESERVATION RESTRICTIONS ON REAL PROPERTY

*Be it Enacted by the Senate and House of Representatives in
General Court convened:*

391:1 Definition of and Enforceability of Conservation Restrictions. Amend. RSA 477 by inserting after section 44 the following new subdivision:

Conservation and Preservation Restrictions

477:45 Definitions.

I. A conservation restriction shall mean a right to prohibit or require, a limitation upon, or an obligation to perform, acts on or with respect to, or uses of, a land or water area, whether stated in the form of a restriction, easement, covenant or condition, in any deed, will, or other instrument executed by or on behalf of the owner of the area or in any order of taking, which right, limitation, or obligation is appropriate to retaining or maintaining such land or water area,

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including improvements thereon, predominantly in its natural, scenic, or open condition, or in agricultural, farming, open space or forest use, or in other use or condition consistent with the protection of environmental quality.

II. A preservation restriction shall mean a right to prohibit or require, a limitation upon, or an obligation to perform, acts on or with respect to or uses of a structure or site historically significant for its architecture, archaeology or associations, whether stated in the form of a restriction, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of the structure or site or in any order of taking, which right, limitation or obligation is appropriate to the preservation or restoration of such structure or site.

477:46 Restrictions Enforceable. No conservation restriction held by any governmental body or by a charitable, educational or other corporation, association, trust or other entity whose purposes include conservation of land or water areas or of a particular such area, and no preservation restriction held by any governmental body or by a charitable, educational or other corporation, association, trust or other entity whose purposes include preservation of structures or sites of historical significance or of a particular such structure or site, shall be unenforceable against any owner of the restricted land or structure on account of lack of privity of estate or contract, or lack of benefit to particular land, or on account of the benefit being assignable or being assigned to any other governmental body or to any entity with like purposes. This section shall not be construed to imply that any restriction, easement, covenant or condition which does not have the benefit of this section shall, on account of any provisions hereof, be unenforceable. Any doctrine of law which might otherwise cause the termination of such a restriction shall not be effected by the provisions of this subdivision.

477:47 Interests in Real Estate. Conservation and preservation restrictions are interests in real estate and a document creating such a restriction shall be deemed a conveyance of real estate for purposes of RSA 477:3 relating to execution and recording. Such a restriction may be enforced by an action at law or by injunction or other proceeding in equity.

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391:2 Effective Date. This act shall take effect sixty days after its passage and shall apply to conservation and preservation restrictions created before as well as after its effective date.

[Approved June 30, 1973.]

[Effective date August 29, 1973.]

Maine Revised Statutes, Annotated Title 33, Sections 667, 668

§ 667. Conservation restrictions; defined

A conservation restriction means a right, whether or not stated in the form of a restriction, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of land or in any order of taking, appropriate to retaining land or water areas predominantly in their natural, scenic, open or wooded condition, or as suitable habitat for fish and wild life, to forbid or limit any or all:

1. Structures. Construction or placing of buildings, roads, signs, billboards or other advertising, utilities or other other structures on or above the ground.

2. Landfill. Dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste or unsightly or offensive materials.

3. Vegetation. Removal or destruction of trees, shrubs or other vegetation.

4. Loam, gravel, etc. Excavation, dredging or removal of loam, peat, gravel, soil, rock or other material substance in such manner as to affect the surface.

5. Surface use. Surface use except for purposes permitting the land or water area to remain predominantly in its natural condition.

6. Acts detrimental to conservation. Activities detrimental to drainage, flood control, water conservation, erosion control or soil conservation, or fish and wild life habitat preservation, or

7. Other acts. Other acts or uses detrimental to such retention of land or water areas.

1970, c. 566, § 1.

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§ 668. ——— ———: acquisition, effect, recording and release of restrictions

No conservation restriction as defined in section 667 held by any governmental body, whose purposes include conservation of land or water areas or of a particular such area, shall be unenforceable on account of lack of privity of estate or contract or lack of benefit to particular land or on account of the benefit being assignable or being assigned to any other governmental body with like purposes. All such restrictions shall be duly recorded and indexed in the registry of deeds for the county where the land lies so as to affect its title, in the manner of other conveyances of interests in land, and shall describe the land subject to said restrictions by adequate legal description or by reference to a recorded plan showing its boundaries.

Such conservation restrictions are interests in land and may be acquired by any governmental body which has power to acquire interests in land, in the same manner as it may acquire other interests in land. Such a restriction may be enforced by injunction or proceeding in equity, and shall entitle representatives of the holder of it to enter the land in a reasonable manner and at reasonable times to assure compliance. Such a restriction may be released, in whole or in part, by the holder for such consideration, if any, as the holder may determine, in the same manner as the holder may dispose of land or other interests in land, subject to such conditions as may have been imposed at the time of creation of the restriction.

This section shall not be construed to imply that any restriction, easement, covenant or condition which does not have the benefit of this section shall, on account of any provision hereof, be unenforceable. Nothing in this section or section 667 shall diminish the powers granted by any general or special law to acquire by purchase, gift, eminent domain or otherwise and to use land for public purposes.

1970, c. 566, § 2.

Appendix F

FROM COMMENTS BY ALBERT B. WOLFE

The story of the Maine Coast Heritage Trust is told in overview by John N. Cole, Editor of the *Maine Times*, in *From the People Up* in the January 1974 issue of *Yankee* magazine.

It should be noted that the Maine Act differs from the Massachusetts one in dealing only with restrictions held by governmental agencies, and that the New Hampshire Act (effective August 29, 1973) gives blessing to affirmative Agreements as well as negative or restrictive ones, and thereby assures that Agreements or covenants to pay taxes, to conform to all requirements of law governing the use of land and construction thereon, and to maintain structures or particular features in weathertight or other special condition and in accordance with their original styles or designs, will run with the land and be enforceable by the restriction holder, despite serious doubts whether such would otherwise be so held, since the English Common Law of a century or more ago would not permit such running and enforceability.

It should be noted also that Connecticut, Maine and New Hampshire do not include any requirement of approval by authorities charged with local, regional or state planning as meeting criteria such as is in the fourth paragraph of Massachusetts Section 32, or as the American Law Institute's Model Land Development Code would apply to historic district and individual landmark decisions (Sec.2-208,209). Such amendments may be advisable if ardent conservationists are to be made more aware of the needs for balancing economic, social and political considerations with environmental ones.

It should also be noted that the Maine, Connecticut and New Hampshire Acts have not faced up to the problems title examiners

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will have when the normal period for title searches has elapsed after the effective dates of their respective Acts. Will title searches in each state then have to be carried back to their Act's effective date to make sure the titles are not subject to such restrictions?

The answer to this dilemma for all states is to have all title data indexed by numbers or letters suitable for data processing (parcel identifiers) either in addition to indexing by grantors and grantees as has been spelled out in statutes for nearly 200 years, or when the problems of indexing by parcel identifier have been sufficiently worked out, then by such indexing to the exclusion of the grantor-grantee indexing.

A North American Conference on *Modernization of Land Data Systems, a Multipurpose Approach* is now being scheduled for April 15-17, 1975, in Washington, under the sponsorship of a newly organized North American Institute on Modernization of Land Data Systems which in turn is sponsored by the American Bar Association. The Massachusetts Executive Office of Communities and Development has now appointed an Advisory Committee for a Land Records Improvement Study Project which awaits only legislative budget approval or National Science Foundation Grant approval for getting started, hopefully by July 1, 1974. When and if such indexing is operational, the use of restrictions for both historic preservation and open space conservation will be greatly assisted, and automatic policing by our title transfer search systems will obviate much of the need for governmental controls, whether by zoning, or federal or state environmental statutes.



Something to Preserve ~ *A report on HISTORIC PRESERVATION by the acquisition of protective agreements on buildings in IPSWICH, MASSACHUSETTS, written and published by THE IPSWICH HISTORICAL COMMISSION in cooperation with the Ipswich Heritage Trust and the United States Department of Housing and Urban Development, Office of Community Planning and Development, Office of Environmental Quality*

FRONT COVER: High Street, Ipswich
photo by Robert Smallman

BACK COVER: Interior, Preston-Foster House
photo by Todd Stuart

Text photos by TODD STUART and drawings by DAVID HART